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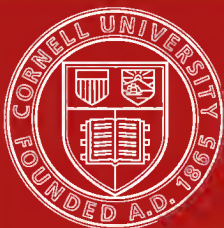
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STUDIES IN HISTORY ECONOMICS AND PUBLIC LAW

EDITED BY
THE UNIVERSITY FACULTY OF POLITICAL SCIENCE
OF COLUMBIA COLLEGE

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I

THE FINANCIAL HISTORY OF VIRGINIA

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

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Volume IV]

[Number 1

THE
FINANCIAL HISTORY OF VIRGINIA

1609-1776

BY

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COLUMBIA COLLEGE

NEW YORK

1893

50

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INTRODUCTION.

A financial history is generally accounted a dull and lifeless work. Taxes, it is said, are hateful things in the eyes of mankind; they are not an enlivening subject for contemplation. But the same objection may be made to the study of any social evil. Such things are incidental to a state of civilization, and we study them in order to discover the most practical way of mitigating their abuses. The very existence of society organized in the state renders the study of financial history necessary,—“the maintaining of the publick in all estates being of no less importance, even for the benefit of the private, than the root and body of a tree are to the particular branches;”—to quote the words of Sir Edwin Sandys, the moving spirit of the Virginia Company. Thus there is ample justification for the task herein undertaken. So much for the subject matter: now as to the method which has been pursued.

To trace the gradual development of systems and theories is the main object to be attained. One does not look to a primitive society and its institutions for well rounded principles and technical details; for to construct a science of finance, where there was none in fact, would be to pervert the course of history. Theories do not arise until experience has taught man the abuses attendant upon social life. Consequently the financial history of this oldest American Commonwealth for many years is merely the story of the simple methods adopted by a people, too fully occupied in conquering a wilderness to spin fiscal theories, who wanted to support their incipient government in the easiest possible

way. All details which do not bear upon this evolutionary process, or which do not illustrate the origins of existing social institutions in some way will be omitted. "We must discriminate between history and antiquarianism;"—writes the historian Ingram—"what from the first had no significance, it is mere pedantry to study now." Nevertheless in a work of this kind much detail and many statistics appear to be unavoidable. I can only plead for these the eloquent excuse of Governor Dudley, of Massachusetts in a similar case;—"If any tax me for wasting paper with recording these small matters, such may consider that small things in the beginning of natural or political bodies are as remarkable as greater in bodies full grown."

To those gentlemen, in Virginia as well as in New York, who have been so unfailing in their courtesy to me, during the collection of the material for this sketch, I would acknowledge my sincere sense of obligation. The endeavor has been to justify, so far as possible, the assistance which they have so cordially rendered upon every occasion.

CHAPTER I.

DIRECT TAXATION.

The Rise of Private Property. The right of taxation vested in a state, as well as the obligation upon the citizen to contribute to the support of it, is based upon the institution of private property. It is necessary, therefore, in order to understand the early fiscal history of Virginia, to know how its lands were granted in first instance; what relation existed between the Virginia Company and the colonists; and finally how the institution of private property was evolved from the early communistic system. The colony was at first essentially a part of a private corporation, organized to develop a new territory in such manner as to secure the greatest profit to the stockholders. In pursuance of this idea, the royal instructions issued under the charter of 1606 "do establish and ordaine that the said several colonies and plantations and every person and persons of the same, severally and respectively, shall within every of their several precincts for the space of five years, trade together all in one stocke or dividably, but in two or three stockes at the most, and bring, not only all the fruits of the labours there; but alsoe all other goods and commodities, into several magazines or store-houses: and that there shall be chosen there, elected yearly by the president and councell, one person to be treasurer or cape merchant to take the charge and manageinge of all such goods which shall be brought into or taken out of the severall magazines."¹ This institution must not be con-

¹ Hening's *Statutes at Large*, i, 71.

founded with the Virginia Company itself; it was a subordinate part of it, the Company merely holding a controlling interest in its stock. It proved to be so fruitful of abuses, that it was abolished in 1620, after which date, trade was opened to every private individual in the colony.¹

The first modification of this system was introduced in 1613 under Governor Dale, after the expiration of the five years of compulsory communism. Three acres of cleared ground was allowed to each settler, together with one month's labor in each year; the other eleven months were to be at the disposal of the Company for the cultivation of the "public garden." At the same time each settler was granted two bushels of seed corn yearly from the common store.² Beside this, every adventurer who came to Virginia, or who sent a representative, received a hundred acres of forest land, together with a share in the Company. The price of a share to mere "adventurers of the purse" was twelve pounds, ten shillings.³ This proved so attractive that the land premium was reduced to fifty acres in 1616; but even then the development of the private estates had much weakened the Company's resources. The obligation of these settlers was

"to maintaine your Ma'ties right and title against all foreigne and domestique enemies. To watch and ward in the townes where they are resident. To do thirty-one day's service for the colony, when they shall be called thereunto—yet not at all times but when their owne busines can best spare them—to pay yearlie unto the magazine for himself and every man servant two barrells and a half a piece of their beste Indian wheate. No farmer or other, who must maintain themselves shall plant any tobacco unless he shall yearly set and maintayne for himself and every man servant two acres of ground with corne by which meanes the magazine shall yearly be sure to receave their rent of corn."⁴

¹ Stith, 171.

² *Ibid.*, 131.

³ *Purchas's Pilgrims*, iv, 177c.

⁴ Neill, *Virginia Company*, 107.

Another method of tenure which was proposed as an inducement to the city of London to apprentice poor children to the Company was similar to the *McTayer* system of Italy.¹ This was to place "tenants upon the publick lands with best conditions where they shall have houses with stock of corn and cattle to begin with, and afterwards the moiety of all increase and profit whatsoever."² After seven years of this holding it was to be replaced by a grant of twenty-five acres "in fee simple by socage tenure for the rent of 6d. for every five and twenty acres, in lieu of all services in regard of the tenure."³ One hundred children were sent over under this contract. But since the charter of the Company was recalled before the expiration of their apprenticeship, they became subject to the same quit-rent tenure as the other colonists.⁴

Finally, a third system of large proprietary grants was adopted, not unlike the feudal tenures of England. In this case, the tenants were subject not to the Company, but to the proprietaries who owned the lands, each making his own terms with tenants. Yet as land was so plentiful and cheap, the rents imposed were somewhat less onerous than those exacted by the Company itself, on account of the competition among the different proprietors. The first of these grants was made to Governor Dale, and was known as the

¹ Doyle, 187.² *Virginia Historical Collections*, vii, 25.³ *Ibid.*, 45.⁴ The system is described in a curious rhyme called "*Newes from Virginia.*"

"And when that they shall hither come
 Each man shall have his share,
 Day wages for the laborer
 And for his more content
 A house and garden plot shall have;
 Besides 'tis further ment
 That every man shall have a part,
 And not thereof denied
 Of general profit, as if that he
 Twelve pounds ten shillings paid."

Alex. Brown, *Genesis of the United States*, 422.

Bermuda Hundreds. On this plantation the tenants were required to render but one month's service in the year, "in neither seed time nor harvest," the other eleven being for their own private crops. This is in marked contrast to the Company's tenants who were obliged to labor eleven months for the use of the land, having but one month in the year for their own profit. In the Bermuda Hundreds, however, there was an additional tribute of two and a half bushels of corn yearly to be paid to the proprietor.¹ This system of tenure was rapidly extended, so that in 1620 there are records of eleven of these proprietary grants.² Their special importance here is that the rents to these freeholders were at first the only contributions which tenants had to pay. They were distinctly feudal in character, but from them were developed the public dues and services of a later time.

The Decline of the Virginia Company. These grants were at once a result, as well as a cause, of the rapid decline of the Company, especially under the pernicious administration of Governor Argall. The treasurer reported at a "great and general quarter court" of May 17th, 1620, that—

"The colony being thus weak and the treasury utterly exhaust, it pleased divers lords, knights, gentlemen and citizens to take the matter anew in hand, and at their private charge (joining themselves into societies) to set up divers particular plantations. But as the private plantations began thus to increase, so contrarywise the estate of the public for the setting up whereof about £7500 had been spent, grew unto utter consumption; for whereas the Deputy Governor, about May 1617, hath left and delivered to him by his predecessor a portion of public land called the Company's garden, which yielded to them in one year about £300 profit;—tenants eighty-one yielded a yearly rent of corn and service, which rent-corn, together with the tribute-corn from the barbarians, amounted to above twelve hundred of our bushels by the year; kine, eighty;

¹ *Virginia Historical Collections*, vii, 22.

² *Purchas's Pilgrims*, iv, 1776.

goats, eighty-eight. About two years after—viz., Easter 1619—his whole estate of the public was gone and consumed, there being not left at that time to the Company either the land aforesaid, or any tenant, servant, rent or tribute-corn, cow or salt work, and but six goats only.”¹

Thus it appears that the revenues of the Company, which was the government, were rapidly decreasing because of the changes in these various systems of land tenure. A secondary result was that the seeds of future discord were being sown, which caused much trouble when the questions of actual taxation arose. There were three distinct classes in this primitive society. The first was composed of the great proprietaries, who leased a part of their lands, cultivated another part themselves, but who also held extensive tracts of uncultivated forest land. These men were the most influential in the government for a long time. Secondly, there were the small farmers on the fifty and one hundred acre tracts, who cultivated their possessions directly, being subject however to certain rents to the Company. These men seem at first have been quite numerous. Lastly, there was a third class, composed of tenants, indentured servants, and a few petty traders, whose interests were allied with those of the small farmers. The development of these classes is important, since with the institution of negro slavery they finally came to have divergent interests which profoundly affected the forms of taxation during the colonial period.

The general discontent with the Company's communistic system soon became widespread. It was fruitful of so great abuses that many complaints are preserved in the old records.² And it was for this reason that the old arrange-

¹ *Virginia Historical Collections*, vii, 65.

² A letter to Lord De Lawar recites for instance that the Governor “takes the ancient colony-men, which should now be free, and our men from the common

ment generally fell into disuse. At the same time two distinct causes coöperated to bring about a change. These were the convening of the Assembly of Burgesses for the first time by Governor Yeardley in 1619; and secondly the growing extent of the colony which made a new institution,—the parish—necessary for the purposes of local government. These soon led to a sharp distinction between the Company as a corporate body, and the community as a body politic. The Company declined in importance before the developing state, and its revenues gradually languished into nothingness. The treasurer reported in 1621, that “the plantation founded and prosecuted with the charge of about one hundred thousand pounds, without any profit as yet, hath in these latter days been chiefly supported by his Majesty’s most gracious grant of the use of lotteries.”¹

Heretofore the various payments to the company, whether in land or in services, had been virtually taxes for the support of a public body, so far as the colonists were concerned. To be sure, they were levied by a private company to pay interest upon invested capital; but in return this body performed all of the services for the colonists which were necessary to satisfy their common needs. The real expenses incurred by it however were insignificant; they were regarded as part of the necessary outlay in a purely business venture. It was a question of dollars and cents with them. With the state, on

garden to set them about his own employments, and with the colony’s store of corn feeds his men.”—*Virginia Historical Collections*, viii, 34.

Also, “The heavy taxations that are laid upon us freemen for building of castles, paying of publique debts, for the not gathering of sassafras, etc., so that it will come to my share with that that is paid and that that is to pay in corne and tobacco to at least twenty, or five and twenty pound sterling this yeere (1617–8); so that when I have paid this and paid my faithlesse servants their wages, I shal scarce have good tobacco enough left to buy my selfe for the nexte yeer a pint of Aqua vitæ.”—*Purchas’s Pilgrims*, iv, 1806.

¹ *Virginia Historical Collections*, vii, 130.

the other hand, many considerations of a totally different stamp apply. After 1620, these new governmental expenditures began to increase in importance; and a study of their evolution reveals the fundamental purposes for which government exists. It shows the reason why the Virginia Company was totally inadequate to serve as a substitute for civil government in a developed society. But of course after its abolition in 1625, the community became a true body politic, and the real history of taxation begins.

The Beginnings of Taxation, and Public Expenditures.

One of the principal charges on a primitive community like Virginia was the provision for the Governor's support and salary. At first this had been paid by the Company as an ordinary charge upon their budget; but with the appointment of Governor Yeardley, a new arrangement was made, whereby three thousand acres of land were "to be set out, so as to ease the Company henceforward of all charge in maintaining him." At the same time fifty tenants were transported by the company to cultivate this domain.¹ It was expected that this permanent establishment would suffice at least to pay his salary of £1000.;² yet the number of tenants was soon increased to one hundred, with the stipulation that the Governor should leave as many at the "expiration of his government as he findeth or went with there on his entrance." Governor Yeardley's additional offer to administer the twelve thousand acres of public land "gratis, the Company hold it not requisite to accept, but rather to dispose some part of his liberality another ways."³ It was, perhaps, well that they did so, for Stith tells us⁴ that despite his liberality, Yeardley left but forty-six of the hundred original tenants, and moreover, flatly refused to make up the deficit.⁵

¹ *Virginia Historical Collections*, vii, 22.

² Stith, 165.

³ *Virginia Historical Collections*, vii, 54.

⁴ Stith, 204.

⁵ It seems to have been the custom to allow the Governors extra compensation

The only other officer whose support was likely to be considerable—the Secretary—endeavored to impose fees for various sources upon the people; but the Council in England discontinued them, and as in the Governor's case favored a public domain for his use and profit, instead of fees. In conformity with this idea five hundred acres with twenty tenants was granted to him in 1620, and all the existing fees were abolished.¹ With the meeting of the first assembly, in 1619, a new corps of officers became necessary. And the first real tax levied in Virginia, amounting to one pound of tobacco per poll, was imposed on August 4th, 1619, for the support of the speaker, clerk and sargent for their services during this session.²

After providing in this way for the salaries of civil officers, it became necessary to take measures for the defence of the colony against the Indians. In this matter the colonists took the initiative at once. They wrote to the Company's officers that they were "very desirous to have engineers sent unto them for the raising of fortifications, for which they are content among themselves to bear the charge thereof." For this purpose it was ordered that "the fiftie part of their hundred be employed in this work till it be p'fected."³ Then, the fort having been built, it became necessary to garrison it, and this gave rise to the custom of commuting military services into payments in kind, exactly as had been done in England three hundred years earlier. In 1623 it was enacted that "every man that hath not contributed to the finding a man at the castell shall pay for himself and servants

at times, for the Treasurer of the Company moved at a meeting on March 3rd, 1619, that "for his better encouragement the Company would please to send him a present, it being no new thing, but much used by them heretofore." This custom is important, as it is the source of some of the extravagant claims of the later Governors to perquisites, which proved to be very vexatious to the colonists.—*Virginia Historical Collections*, viii, 47.

¹ Stith, 174.

² Acts, 1619.

³ *Virginia Historical Collections*, vii, 44.

five pounds of tobacco a head ;”¹ “ and that for defraying of such publique debts our troubles have brought upon us there shall be levied ten pounds of tobacco upon every male head above sixteen years of adge now living.”² It being also necessary to defend the colony against the exactions of the Royal farmers of the customs, still another poll tax of four pounds of tobacco was levied by the same Assembly to defray the expense of sending John Pountis as a commissioner to England.

In 1621 the county courts began to develop, and the parish first became a local body. This introduced a third charge upon the colonists, and in 1623 it was enacted “ that there shall be in every parish a publick granary unto which there shall be contributed for every planter a bushell of corne, the which shall be disposed by the major part of the freemen, the remainder yearly to be taken out by the owners at St. Tho’s his day, and the new bushell to be putt in the roome.”³ It was only in this matter of local finance that there was as yet any freedom of action; the legislature was still subject to the London Company, in whose quarter courts various acts of the Assembly were much discussed.”⁴

Freedom in the domain of taxation was one of the first powers claimed by the infant state. But even as late as 1622, the Governor was instructed by the Company in the matter of these fort duties that “ this tax we haue here made, not to giue you authority (wch needed not), but to giue a good example by taking more of the burden than can be proporcionable can be due unto us—this diposition of mynds we assure o^r selves you shall find, if not you must make it, and compell them to their onne good, that will not otherwise understand it.”⁵ The colonists opposed this principle from the beginning, and one of the first acts of the next as-

¹Hening i, 127.

²*Ibid.*, 128.

³*Ibid.*, 125.

⁴*Ibid.*, 122.

⁵Neill, *Virginia Company*, 353.

sembly was especially directed against the exercise of this patèrnal power. It declared "that the governor shall not lay any taxes or ympositions upon the colony, their lands or comodities other way than by the authority of the general Assembly to be levyed and ymployed as the said Assembly shall appoynt."¹ And this power it held firmly through all the struggles with the ambition and avarice of its executives, reaffirming it from time to time as the occasion offered.

During the period to 1629 there are no records of legislation, and the Governor and Council apparently executed the laws then in force.² The needs of government were satisfied mainly by the personal services of the colonists, although a poll tax was doubtless levied from time to time, as the records mention payments of tobacco which could be met in no other way.³ The contributions, however, must have been largely voluntary, or at all events could not have been contested, for there is the greatest indefiniteness in the legislation on the subject. The first tax of 1623 was levied upon all "planters" over eighteen years of age; the second was laid upon every "male head" over sixteen, and in 1629 and 1633 the tax was merely "per pole," leaving the question of age or sex entirely undefined. As yet there were no local officials, as the Burgesses received the lists of their several plantations, which were made out by the masters of families and the freemen.⁵ Unless there had been a general recognition of the justice and necessity of such public contributions, and unless the burden had been moderate in amount, so primitive an arrangement would never have sufficed; that it was effective shows that the freemen generally acknowledged the claims of their incipient state, and did not attempt to evade their liability. In the period from 1730 to 1740 it became necessary to develop the system of collection, and the local

¹ Henning i, 124.

² *Ibid.*, 129.

³ *Ibid.*, 142.

⁴ *Ibid.*, 196.

⁵ *Ibid.*, 143.

government being modelled after the English pattern, this work of collection was assigned to the sheriffs of the counties.¹ They were made personally responsible for the taxes assessed in their districts; but at times this proved insufficient. As in 1644, when from crop failure, collection became difficult, the responsibility was transferred to the masters of plantations, who were given power to hold the crops of all the freemen in their households until the levies were paid.² This was the beginning of that complicated system of distress and forfeiture which developed later, as a result of the lax and improvident habits of the planters in colonial times.

Personal responsibility was thus the basis of taxation at first, but as the burden of taxation became heavier this liability was partly transferred to the real estate. A poll tax of considerable amount being necessary to build a fort in 1631, the law added,³ "that for such persons as have departed out of this county since the contract of the ffort and for such as have since deceased leaving sufficient estates, it is ordered that they shall be lyable to pay this tax." This contained the germ of a property tax, but its development was very slow; and practically it was not till after the Revolution that this merely contingent liability of real estate, except for extraordinary taxes, became anything like the general property tax which was the rule in the New England Colonies from the earliest times. There was, however, a general tendency manifested in favor of the property tax during the period following 1630. This, as we shall see, led to the temporary imposition of such a tax during an Indian war; but it soon disappeared in favor of other taxes. The idea that possessions were an indication of faculty appears ten years later, when the ideal system was "an assessment proportioning in some

¹ Hening i, 279.

² *Ibid.*, 286.

³ *Ibid.*, 150, 157 and 196.

measure payments according to men's abilities and estates augmented unto the wealthier [sort by the number of milk kind, and by that relief afforded to the poorer sort, which course through the strangeness thereof could not but require much time of controverting and debating."¹ Even here no mention of real estate was made, for land was too plentiful and cheap; or perhaps the Assembly was so far controlled by the landed interests that it was more agreeable to consider property as measured by the number of cattle, rather than by the acres of land.

It is interesting to note that there was a general recognition of the justice of exemption for the minimum of subsistence though there was no legal provision ever made for it, and our quotation shows how great the opposition would have been to any attempt to introduce it. In fact the only exemptions at this time were at the opposite end of the scale. The Governor, his Council, and ten servants each, were relieved in 1639² from all public charges in accordance with the Royal instructions which Governor Berkeley brought with him. This was reduced to mere personal exemption in 1642,³ which remained the rule until 1676. There had been from the first some other exemptions but there was no established rule. The earlier Assemblies exempted all new comers from taxes and military services for a year, but in 1629 they were again made liable with the older colonists.⁴ This custom was reversed at a later time when all the old settlers were allowed special privileges. The system was more equitably adjusted in 1630, when new comers were exempted from the "marches" but were made liable to the payment of the public levies. None of these exemptions applied to the tithes, which were very considerable in amount;

¹ *Remonstrance of the Assembly against the charter of a new Company*, 1642; Burk ii, 68.

² Hening i, 228.

³ *Ibid.*, 307.

⁴ *Ibid.*, 141.

and the general principle appears to have been to levy upon everybody and collect where they could.

After 1639 the Governor appears to have received a regular salary allowed by the king from the tax upon tobacco exported, in place of the revenue from the lands formerly granted for his support, which had reverted to the king with the dissolution of the Company.¹ On the establishment of the Commonwealth this revenue ceased. To provide for his support an act was passed in 1643 levying a poll tax of the value of two shillings, to be paid in commodities at fixed rates.² There were two reasons for this departure from the custom of levying all taxes in tobacco; first, that it was a year of Indian troubles and short crops; and secondly, because the taxes in kind could be made so various that they would serve for the Governor's "accommodation for the present year." Thus he would not be subjected to the delay and risk of realizing upon his tobacco by shipping it to England in the disturbed state of affairs then existing. This view is supported by the further provision which ordered seven counties to pay in corn, while three were permitted to contribute general supplies. The sheriffs were empowered to hire boats and bring these provisions directly to the Governor's "palace." This, with the grant of a house and lot,³ completely provided for his support. It is a good example of the primitive method of taxation then existing under a system of barter, and before there was anything like a treasury or

¹ Burk ii, App. v; also p. 34.

² "Indian corne at 10 sh. per barrell, 2 barr. of ears to one of corne. Wheat at 4s. per bushell. Malt at 4s. per bushell. Beife at 3d. 1-2d. per pound. Pork at 4d. per pound. Good henns at 12d. Capons at 1s. 6d. Calves at 6 weeks old, 25s. Butter at 8d. per pound. Good weather goats at 20s. Piggs to roast at 3 weeks old, at 3s. per pigg. Cheese at 6d. per lb. Geese, Turkeys and Kidds at 5s. per peece."—Hening, i, 280.

³ Neill, *Virginia Carolorum*, 171.

a civil list. This lasted all through the seventeenth century, for as late as 1679 we find on the occasion of an Indian war "that every forty tythables (are) assessed and obliged to fitt and set forth one able and sufficient man and horse with furniture well and compleatly armed."¹ There was no intervention of the public body to provide supplies or ammunition, but the settlers coöperated to perform certain duties which were common to them all.

The Poll Tax versus the Land Tax. The year 1644 was filled with misfortune. There were disputes between the partisans of the Puritans and Cavaliers; and then it was deemed necessary to send Governor Berkeley to England to negotiate terms of peace. For this purpose an extraordinary tax of eighteen pounds of tobacco per poll was levied, of which the sheriffs "converted a great part to their private benefit."² We have already seen that all of the expense of providing for the support of the government had been cast upon the colony after 1625. The tobacco trade was greatly disturbed, and there was a shortage in the crop. There had been an outbreak of Indian hostilities, by which over three hundred lives were lost, and it became necessary to levy an extra poll tax for this purpose. Many settlers were impressed, and many others abandoned their plantations for fear of the Indians, so that the crops were still further curtailed.³ It became necessary to erect three forts, for which service many artisans were impressed. To meet all of these expenses the number of tithables was increased by including all negroes, men and women, and every fifteen who remained at home were held liable for the equipment and maintenance of one soldier in the field. The distress became so great that poor debtor acts were passed, and finally the planters were so hard pressed that they could not even pay their

¹ Hening ii, 435.

² Hening i, 286-297.

³ *Ibid.*, 287-291.

"wine debts;" and payment of two-thirds of these was extended until after the collection of the next crop.

The result of this accumulation of disasters was a great uneasiness among the people under the heavy burdens imposed upon them. In 1645, it became necessary to satisfy this popular demand by a levy of extraordinary taxes upon property, although all public charges had been met heretofore by means of a simple tax by the poll. This act¹ recited that "whereas the ancient and usual taxing of all people of this colony by the pole equally, hath been found inconvenient, and is become insupportable for the poorer sorte to beare, that (hereafter) all publique levies and county levies be raised by equall proportions out of the visible estates in the colony. The conformity of the proportions to be as followeth, vizt

One hundred aces of land	at	04 lbs. tobacco.
One cow 3 years old	at	04
Horses, mares and geldings	at	32 a peece.
A breeding sheep	at	04
A breeding goate	at	02
A tithable person	at	20"

This act did not abolish the poll as a basis of taxation, as some historians have asserted. The capitation tax was continued at about the usual rate, while the other property taxes were merely supplementary, "being onely intended for the better support of the wafr, and no longer to continue."² Consequently they were repealed in 1648, leaving the customary poll tax once more as the basis of all the levies. The preamble of the act, which is quoted above, was apparently nothing more than a sop to quiet the popular demand for a more equitable distribution of public burdens, extorted from the wealthy planters who held control of the assembly. This in fact marks the beginning of that struggle between the great and the small land owners, the

¹ Hening i, 305.

² *Ibid.*, 356.

cause of which lay deep rooted in the origin of private property under the old Virginia Company. This in time crystallized into a sectional as well as a class antagonism; and it lasted until Virginia was finally subdivided into two states. Already the wealthy planters on the tide-water belt were united in opposing a tax upon their uncultivated lands, while the tenants and small farmers favored the abolition of the poll tax.¹ This temporary property tax does not indicate the acceptance of any new principle; it was merely an expedient to meet a sudden emergency. The real change was long delayed; in the meantime a redistribution of power was necessary, through the increase in the number of small farmers by the settlement of the upland country. The old struggle for political supremacy between the men of the mountain and of the plain had to be definitely settled before there could be any permanent change in the systems of taxation.

The imposition of this land tax seems to have been indirectly the cause of a great many abuses in the following years, which were marked in other respects as well as by an unusual laxity in public morale.² In a community so scattered as was Virginia, where there were no towns and where each plantation was a completely self-sufficient organism, it was very easy to conceal the exact number of slaves, horses and cattle. In 1646 the first complaint on record was presented of "greate defect in the titheable persons, lands, horses, mares, *etc.*, to the prejudice of many who have duly and according to law presented their lists."³ Three years later the Assembly discovered that "notwithstandinge the yearly importation of people, the number of titheables is rather diminished than augmented."⁴ The youth of the colony under sixteen were exempted from the poll tax, yet

¹ Burk ii, 249.

² Doyle, 237.

³ Hening i, 329.

⁴ *Ibid.*, 361.

it appeared 'that once passing under that age they are seldom or never acknowledged to exceed the same.'¹ Female slaves being exempted, the custom of employing them as field hands instead of men became so general that an act was passed to cover the case. Even when taxes were paid they were often rendered in worthless tobacco, raised by "bad men" for that purpose.²

It must not be thought that all the abuses lay upon the side of the tax payers. The corruption and venality of the sheriffs was a constant cause of complaint. In the year of scarcity, 1644, we have seen that the sheriffs received "great private benefit" from a tax levied to send Governor Berkeley to England. Other abuses arose from the "vast extent" of the counties, or from the "multitude of other employments" of the sheriffs.³ The laws themselves were also very indefinite. Sheriffs were thus enabled to demand payment at disadvantageous seasons, often with the intention of compelling distress or forfeiture in order to increase the fees of their offices.⁴ Even the Burgesses declared in 1661 that "the fraud of sheriffs hath very much augmented the taxes." Lord Culpepper wrote that the levies were "commonly managed by sly cheating fellows that combine to cheat the public;" he affirmed that it cost twenty per cent of the taxes to collect them.⁵ The sheriffs often connived with the planters, so that an act was passed to punish all who took tobacco for tithables, whose names were not on the lists.⁶ Even this last expedient of posting all tithables on the court house doors was not enough, and a registry of births was instituted

¹ By a law of 1661, all males were made liable to the poll tax. This was moderated in 1680, when it was declared "too hard and severe that children shall be liable to taxes before they are capable of working."—Hening ii, 480.

² Hening i, 170, ii, 186; also *McDonald MSS.*, vii, 9.

³ Hening i, 342.

⁴ Hening i, 358 and 389.

⁵ Ch. Campbell's *History*.

⁶ Hening ii, 412.

in 1672.¹ Penalties were made very severe, even to the extent of forfeiture of any slave concealed. And yet in spite of all these regulations the Burgesses were obliged to confess that evasion of taxes was very general.²

A curious but natural state of affairs resulted; the Governor and Council, as well as the Assembly and the people at large, were all agreed in condemning the poll tax. The difficulty was that their remedies and substitutes for it differed as widely as the underlying motives. In 1658 the Burgesses, representing the landed interests, considered "the burthensome and unequall waie of layinge taxes by the pole, and how just and proportionable it will be to impose the same on our comoditie made;"³ and ordered an export tax upon tobacco. Three years later they repeated that "the prudence of all nations hath provided for the defraying the publique necessary charges rather by laying an imposition upon the adventurer for the staple comoditie than by taxing the persons of the inhabitants."⁴ The motive behind this was doubtless their desire to abolish all direct taxes which bore upon them as planters and slave owners. Opposed to this advocacy of indirect taxes, the Governor and Council unanimously represented to the House in 1663 "that the most equal way of paying taxes is by laying a levy upon land, and not upon heads."⁵ The intention of this party was to take advantage of the sentiment in favor of the Royal prerogatives, which followed the Restoration, and by imposing a property quali-

¹ Vagrants were common in the year 1696, which was another source of trouble. The Assembly declared that "Whereas Loose & vagrant persons, That have not any settled residence do too commonly enter themselves singly and not in any housekeeper's list of Tithables, and when the time comes that the Sheriff goes about to collect the publique dues, they abscond and remove from place to place on purpose to defraud the County of their Levies by reason whereof ye Taxes grow the more burdensome and grievous to the settled p'sons of the Inhabitants of the County."—*Calendar Virginia State Papers*, i, 52, and Hening iv, 208.

² Hening ii, 187.

³ *Ibid.* i, 491.

⁴ *Ibid.* ii, 133.

⁵ *Ibid.*, 204.

fication upon the voters, to disfranchise the class which was most inimical to the Crown and its interests.¹ This latter object, indeed, was accomplished by a different expedient, but its effect was rather unexpected. The "little folk," the tenants and small farmers, now appear to have welcomed this proposed land tax, although they had not yet come to regard it as other than a resource for extraordinary occasions, as we have seen it was in 1645. Naturally they desired to make the greater land owners pay the public charges, and so "lessen the levy by the pole."²

It was a question of great importance, for this was a time of "extraordinary taxes," and the poll tax far exceeded all the other public charges, including, as it did, the local taxes. These were very heavy, so that the total levy was often in excess of one hundred lbs. of tobacco a head.³ The Assembly now by an appeal to the people, on the plea of restraining the political power of the Governor, gained their support in the rejection of his proposals. And any lingering distrust on the part of the would-be land taxers, was allayed by the unctuously flattering declaration that "the lives and industry of the citizens were more valuable than lands and houses."⁴ The consequence was that the Governor yielded to the people; the people gave way to the Assembly; and the poll tax was continued, although it was gradually reduced by custom duties upon liquors and slaves imported, and the export of tobacco. It remained, nevertheless, the only direct tax which was levied, the quit-rents being merely nominal and being paid to the King. On all extraordinary occasions it was the main support of the government, as in 1662 when fifty pounds of tobacco was levied to build James

¹ Burk ii, 137.

² *Ibid.*, 249.

³ *Virginia Historical Register*, 1850; reprint of a letter of Gov. Spotswood.

⁴ Burk ii, 137, and Hening ii, 480.

City. In 1674, again, fifty pounds with cask was imposed or two years, to pay the expenses of sending Commissioners to England to remonstrate against the patents granted to Lord Culpepper and others.¹

This extra tax of five shillings more or less, which was more than double the ordinary levy, was coupled with court fees of seventy pounds for suits in the general, and fifty pounds for suits in the county courts.² It seems indeed to have been one of the causes which led to the popular outbreak in 1676, known as Bacon's Rebellion. The abuses which we have seen were so common in administration, had become unbearable; malfeasance in office,³ and misapplication of the colonial revenues, added to the discontent induced by the languishing state of the tobacco trade⁴ and the war with the Dutch; the restriction of the suffrage by various acts of Assembly; all combined to produce a great popular discontent,⁵ and the old question of the poll *versus* the land tax came to the front once more. The duty of a shilling a hogshead on tobacco exported, did not suffice to pay the expenses of government, and the popular demand was that it should be supplemented by a land tax. This it was urged would be "the most equal imposition, and will generally take off the complaints of the people, although some of the richer sort will not like it, who hold a greater proportion of land than they actually plant; who may then by an expedient, very beneficial to the country, lay down

¹ Hening ii, 174, and 313.

² *Ibid.*, 506, and *Eleventh Census, History of Tobacco*, by R. A. Brock.

³ Hening ii, 353.

⁴ Doyle, 235.

"Our trade is now in a more declining condition than hath ever been known," largely by reason of the "low value or rather no value of our comodity tobacco."
—*McDonald MSS.* V.

⁵ Oldmixon, 250.

part of their lands to be taken up by such as will employ it."¹

Here again appears a demonstration against the class legislation which was so often the rule in Virginia politics, and which we shall see recurring upon every possible occasion. The whole control of the Assembly and of the county courts was, in this period after the Restoration, more than ever in the hands of the landed gentry; and they insisted upon a continuance of the poll tax, in spite of the wishes of the Governor and of the small planters and tenants. The so-called Virginia Long Parliament, elected after the Restoration, sat until 1676,² and capped the climax of abuses by levying this extraordinary charge for sending Commissioners to England entirely upon the devoted polls of the "poorer sort." New forts were built by laying more taxes of the same kind; and great abuses had crept into the method of granting land patents, which likewise bore with peculiar force upon the yeomanry, the tenants, the artisans, and the poor whites. These "little folk," with the voters disqualified by that act of 1670³ which restricted the suffrage to freeholders and housekeepers, were the followers of Nathaniel Bacon in the notorious rebellion of 1676.

The brutal suppression of the revolt and the subsequent pernicious rule of Culpepper, strengthened as he was by the most liberal grant of power from the King, put an end to all hopes of a reform in the methods of taxation. Complaints were sent to the Board of Trade and Plantations in England from time to time; but this august body contented itself with recommending naively to those who complained of unjust taxes that they find a more easy way of raising money.⁴

¹ Letter from Mr. Bland, collector of customs; reprinted in Burk ii, 249.

² Doyle, 237.

³ Henning ii, 280.

⁴ *Minutes, Sainsbury MSS.*, viii, 220.

This Council, however, after a while began to take note of these complaints and in a letter of September 20th, 1683, recommended that the poll tax be abolished and a duty upon tobacco be substituted for it.¹ On the appointment of Lord Effingham as Governor he was commanded by the King to discover a way of raising revenue "more equal and acceptable" than the customary poll tax.² There was as yet no tax upon land, and this poll tax, though now secondary to the indirect taxes, was often considerable in amount. Still it tended gradually to become lighter toward the close of the century.³

The Decline of Direct Taxation after 1700. The general theory of taxation in vogue about the beginning of the eighteenth century was that the land paid its just proportion of public burden through the quit-rents; that foreign trade was charged with the customs duties; while "stock" was of little account."⁴ Since the quit-rents had largely fallen into disuse previous to Governor Spotswood's advent, the first part of this theory was not true; the customs duties did indeed produce a very considerable revenue, but a large part of them were as yet accounted for by the Auditor and Receiver General, who were royal officers; they were devoted to the payment of their salaries, and the support of the Governor and Council, and thus were not available for general expenses. The general, county, and parish levies were in ordinary

¹ *McDonald MSS.*, iii, 31. To this communication the Governor made reply, that "all these instructions are extremely good and necessary, but I have not as yet had occasion to put them in practice."

² *Ibid.*, Oct. 24th, 1683.

³ The poll tax was in 1674, 12 lbs. of tobacco; 1682, 89 lbs.; 1684, 47 lbs.; to 1686, 104 lbs.; to 1691, 18½ lbs.; to 1692, 17½ lbs.; for 1692, 13¾ lbs.; to 1694, 21 lbs.; 1695, 22¾ lbs.; 1696, 16 lbs.; 1697, 16 lbs.; to 1699, 19 lbs.; to 1700, 9 lbs.; 1705, 3¼ lbs.; 1710, 9¼ lbs.—Hening, vol. iii.

⁴ *An account of the present state and government of Virginia*, Blair and Chilton, 1697; *Massachusetts Historical Collections*, Series i, vol. v.

times the only direct taxes which could be depended upon; and they alone were paid into the hands of the treasurer, who was responsible to the Assembly, and who was appointed by it.¹

In a time of peace the principal expenditures were for these official salaries; consequently the poll taxes became less and less important. There is in fact no record of a levy of tobacco for nearly twenty years after 1710.² The Burgesses, secure in a source of revenue which allowed the exemption of their lands from taxation, condemned the poll tax henceforth "as grievous and burthensome;"³ and indirect duties were declared to be the "most easy expedient for raising a fund to answer the exigencies of government without subjecting the people to a poll tax."⁴ So opposed was the Assembly to the capitation tax that, when there was a threatened Tuscarora uprising in 1711, and in the sudden emergency it became necessary to increase the revenue, they refused to resort to their old expedient at all. Instead of this they passed a law to impose a ten per cent. duty upon all imports from Great Britain, which even when reduced to six per cent., was of course promptly vetoed by the Governor.⁵ He proposed, as Governor Berkeley had done fifty years before, a tax of a half a penny an acre upon lands; but the Assembly—"men of narrow fortunes and mean understandings"—simply ignored the proposition, and sat seven weeks without as much as referring to this proposal.⁶ The con-

¹ Burk ii *Appendix* xix.

² The levy of 1710, 9¼ lbs., and then of 1727, 10½ lbs.

³ Hening iv, 143, 1726.

⁴ *Ibid.* v, 26, 1738.

⁵ Governor Spotswood wrote, "I'm persuaded they would propose taxing the Import of goods from Great Britain as one of their chief Funds,—that they might throw the expence as much as possible off themselves."—*Spotswood Letters*, i, 130.

⁶ *Spotswood Letters*, i, 133.

sequence of course was that neither a land tax nor a duty upon imports was levied.

The next few years (1713-14) were marked by some embarrassment in the tobacco trade, so that the duty upon imported tobacco did not even suffice to pay the Governor's salary, and the public revenues were considerably curtailed. The deficit in the budget was also increased by a systematic evasion of the quit-rents. The Governor declared that the Burgesses "were persons of the meanest Capacities and most Indifferent circumstances, and whose chief recommendation to that Post is their declared resolution to raise no Taxes upon the People for any occasion whatever."¹ This worthy official was doubtless prejudiced to some extent; yet it is true that considerable obstinacy was manifested by the Assembly. They had, however, a special object in view, which was political rather than fiscal in its significance. They were trying to force the Governor to devote the quit-rents to the ordinary expenses of government instead of remitting them to the king. The Assembly exhibited a marked tendency, nevertheless, toward the abolition of all direct taxes, which was characteristic of the eighteenth century.

After 1715 there succeeded a period of peace and prosperity, during which matters settled down into a regular course, which was not interrupted until the war with the French in 1756. The general expenses of government, exclusive of the fixed salaries, were still met by a poll tax: it was small, however, varying from three to five pounds of tobacco a head.² In 1718 the Governor declared that,

¹ *Spotswood Letters*, Aug. 9th, 1715.

² The general levy by the Assembly was: 1727 to 1730, 10½ lbs.; 1732, 9 lbs.; 1733, 8 lbs.; 1734, 8½ lbs.; 1734-6, 7½ lbs.; 1736-8, 11 lbs.; 1738-40, 6 lbs.; 1740-2, 4½ lbs.; 1742-4, 6 lbs.; 1744, 5 lbs.; 1748-52, 12½ lbs.; 1752, 5½ lbs.; 1753-5, 6½ lbs.; 1759, 6 lbs.; 1761, 6 lbs.; 1762, 7 lbs.; 1768, 2 sh.; 1766, 8 lbs.; 1769, 9 lbs.; 1772, 6 lbs. The county levy in 1732 was 4 lbs.—Hening, iv, 370. Burk gives the average levy for county expenses as 3½ lbs., iii, 403.

"Neighboring provinces must envy Virginia's ease from Public levies when they shall know that 80 lbs. of tobacco per poll is the total sum that has been levied on her people for eleven years past."

Thus the development appears to have been analogous to that of the mother country during the eighteenth century. There, as in Virginia, indirect taxes and especially excises, became more and more popular. It is but natural that the influence of such statemen as Walpole, and the economic writers like Petty and North, should have been felt in this colony. At last the distaste for all direct taxes became so strong that the attention was directed to them rather than to persons or property, even for extraordinary occasions and sudden emergencies.¹ In 1748 a proposition was made to move the capital of the Colony from Williamsburg to a site on the Pamunkey river, and the question of compensation to the first named city was raised. The only expedients that could be devised to obtain £6000 for this purpose, were an increase of the regular export tax upon tobacco, despite the great embarrassments in this trade, and the imposition of a tax of ten shillings upon all coaches and chariots. The Assembly rejected absolutely a resolution to raise the money by a poll tax.² Although the entire project came to naught, it is a clear indication that the ancient direct tax by the poll was in great disfavor. Nevertheless, it was still levied from time to time, as we have said, and was a considerable source of revenue. It was the only elastic tax; the others were

¹ An act of 1753, for the encouragement of settlers on the Mississippi, for instance, imposed an ad valorem tax of 5 % on all slaves imported, 20 shillings on all four-wheeled carriages, and 10 shillings on every 2-wheeled chair, 20 shillings on every ordinary vehicle, 2 sh. 6d. on every suit in the general court, and 1 sh. 3d. on suits in county courts.—Hening vi, 417. It was voted "with great solicitation and all the possible Int's I c'd make."—*Spotswood Letters*, 1753.

² *Journal*, Nov. 11th and 18th, 1748.

limited by the conditions of trade; the tobacco tax was not disposable by the Burgesses, being granted to the king's officers; and the liquor duties could not be screwed to a higher notch for fear of prohibiting the traffic. The main point to be noticed is that the real property of the colony was not regarded in any sense as a basis for public contributions. The owners of carriages, even, were taxed because they could afford them as luxuries, while their houses and lands were exempted, as being necessary to their comfort and support.

Why did the sentiment in Virginia turn in this way from the early poll tax in favor of a system of indirect taxes on exports and imports, if there was so complete a domination of the landlords' interests in the legislature? If the early system was allowed, why had it now become their interest to change the general basis of taxation? Two answers may be found: first, the change in the system of land tenure; and secondly, the growth of the institution of negro slavery. Under the Company the policy of small peasant proprietorships was fostered; but this gave way in a few decades to an extensive monopoly of the soil by a few proprietors. The soil was cultivated at first by white servants who were imported under indenture,¹ to work for a master a few years, and then become independent proprietors. Under such a system the poll tax did not bear with especial weight on the wealthier planters, who were absorbing the land in the first half of the 17th century. The indented servants becoming free in a short time, at once assumed their due share of the burden of taxation.

After 1640 a considerable change in the character of the immigrant population took place.² The earlier indented servants were succeeded by an ignorant and vicious class of transported paupers and convicts, children ["kids"] were

¹ Hening i, 257.

² *Life of Thos. Jefferson*, by Geo. Tucker; Doyle, 383.

kidnapped in great numbers, and a considerable trade in white slaves was established.¹ As the cultivated territory became more extensive the evils of this old system became more apparent; and the planters turned to the growing slave trade of Africa for their supply of labor. Consequently the negro slave rapidly took the place of the white servant toward the close of the century, largely owing to the influence of the Royal Africa Company.² There were three times as many white servants in 1671 as there were negroes. In 1724 it was said, "that these servants are but an insignificant number when compared with the vast shoals of negroes." By 1756 the negro tithables numbered over 60,000, while all of the white tithables, masters and servants, amounted to only 43,000.³ The negro was better suited to the climate, was contented in a state of servitude, and would never hope to emerge from it. On the other hand, the indentured servants were a restless, discontented lot. There was no place for them on the expiration of their apprenticeships; no towns and no manufactures existed; the land was all owned by the great planters; and there was no possible chance for competition with slaves in agricultural labor. The new slave system was therefore economically justifiable; but it was ill adapted to recommend the poll tax to the great slave-holders. This tax had been a partial relief to the proprietors in earlier days. With the new system it became peculiarly onerous to the planter, who was responsible for the tithes of all his laborers; and this great change in the character of the laboring classes offers an adequate explanation for the decided change in public sentiment which took place.

¹ Hugh Jones' *Present State of Virginia*, 1724.

² For an excellent description of the pernicious influence of this great monopoly on the economic development of the South, see the *Life of R. B. Taney*, by Samuel Tyler, Appendix 580.

³ Henning ii, 515; Hugh Jones; *Dinwiddie Letters*.

In connection with the various constitutional reasons which appealed to all classes alike, it caused the partial retirement of the poll tax during the early part of the 18th century.

The French and Indian War. The colony was rudely shaken out of its peaceful content by the French and Indian war of 1756. This was the first great struggle in which the matured colony engaged. It became necessary therefore for a time to broaden the basis of taxation, and to recognize another principle of public contributions. The first impulse of the Burgesses on the outbreak of hostilities was to turn at once to the poll tax which, although relegated to a subordinate place in the budget, had long been the customary resource for all extraordinary occasions. It was resolved in 1754, "by great Persuasion, Many Argum'ts and much Trouble" on the part of the Governor, to raise £20,000 by a poll tax of 2 sh. 6 d., or 30lbs of tobacco to be levied twice during the year.¹

In the spring of 1755 more money was needed, and the poll tax on negroes was again the main stay,² but it was supplemented by a tax of 1 sh. 3d. on every hundred acres of land. This is remarkable as the first land tax which had been imposed for over a century, despite the agitation and struggles of the minority in the Assembly. The fund arising from the export tax on tobacco was almost exhausted;³ nothing more could be expected from it; and in August 1755 £40,000 more was levied at 3 sh. per poll and 1 sh. 3d. per hundred acres of land, to be continued for three years.⁴ The Assembly tried in vain to impose a five per cent. duty on imports, but it was abandoned as impracticable.⁵ The legislature then essayed various methods of raising money which should be less onerous than direct taxes. They endeavored

¹ Hening vi, 436.

² *Ibid.*, 463.

³ *Journal*, March 25th, 1756.

⁴ Hening vi, 522.

⁵ *Journal*, Aug. 8th, 1755.

to set up a Loan office and issue a large amount of paper, but the Governor held them in check for a time; then they tried a lottery, but finally were obliged to revert to taxes.¹ The distress and poverty of the people became very great.² Yet the poll and land taxes were the sole resource; the rates were doubled and trebled,³ but they were grudgingly granted and proved difficult to collect.⁴ The rate per poll was screwed up to 5 shillings, and upon land to 3 shillings per hundred acres.⁵

The Governor at first seems to have regarded the poll tax as the most available one, for, driven to desperation by the aggressiveness of the Assembly in asserting its financial

¹ "Money is so extremely scarce, y't in order to protect our Frontiers an act is passed for a lottery to raise £6000 and to allow the Treasurer's notes to pass as money for the amo' of £20000."

² "I think I c'd raise two or three thous'd Men, but the people are so very poor we cannot raise money to pay, cloth and maint'n them."—*Dinwiddie Papers*.

³ DIRECT TAXES LEVIED DURING THE FRENCH AND INDIAN WAR.

Session, when Passed.	Date of Payment.	Poll Tax (Shillings).	Land per Hundred Acres.	Amount.
October, 1754.....	April, 1755.	2.6	—	£10000
October, 1754.....	October, 1755.	2.6	—	10000
May, 1755.....	April, 1756.	2 (negroes.)	1.3	20000
August, 1755; March, 1756.....	April, 1757.	1	1.3	} 65000
August, 1755; March, 1756.....	April, 1758.	2	2.3	
August, 1755; March, 1756.....	April, 1759.	2	2.3	
August, 1755; March, 1756.....	April, 1760.	2	2.3	
April, 1757; March, 1758; September, 1758..	April, 1761.	4	3	
April, 1757; March, 1758; September, 1758..	April, 1762.	4	3	.....
April, 1757; March, 1758; September, 1758..	April, 1763.	4	3	.....
April, 1757; March, 1758; September, 1758; March, 1762.....	April, 1764.	5	3	.....
September, 1758; February, 1759; March, 1762.....	April, 1765.	5	2	.....
September, 1758; February, 1759; March, 1762.....	April, 1766.	5	2	.....
March, 1760; May, 1760; February, 1759; March, 1762.....	April, 1767.	5	2*	.....
March, 1760; May, 1760; February, 1759; March, 1762.....	April, 1768.	5*	2*	.....
March, 1762.....	April, 1769.	3*	1.3*	.....

* Repealed March, 1768.

⁴ *Washington Letters*, by W. C. Ford, i, 251. ⁵ Hening vii, 9, 77, 165, 172.

supremacy, he proposed to the Governors of the other colonies that they recommend an Act of Parliament for a general poll tax. Of this, he observed "the Poll tax at 2 sh.¹ w'd not be much felt if the poorer sort w'd only deny themselves Punch for one Day at the Courts, w'd pay that tax." With the increasing distress he changed this view, and two years later proposed to reduce this poll to twelve pence and to levy two shillings on the land.² This modification was recommended "as the most equal, as it will be chiefly paid by People of the greatest Property and great Land Holders." He affirmed that this would raise £6,000 and with the quit-rents would amount to less than ½d. an acre, as the total burden on the land owners. Assuming the average value of a slave to be £60, as it was a few years later,³ a poll tax of five shillings would amount to a rate of four mills on the dollar, although this was increased considerably by the poll tax upon the owners and their families. At all events it was less than a rate of a cent an acre on land, which was all the land owners as such would have to pay. Land was probably worth from two to ten dollars an acre according to quality, which would make the average rate less than two mills on the dollar.⁴

This certainly does not appear to be a very equitable proportion between these two levies. The poll tax in the first year of the war bore the whole charge of the campaign. There were about 105,000 tithables in 1759,⁵ which at a two shilling rate ought to have produced over £10,000; whereas the two shillings tax on land for the first two years of the war yielded less than £4,000. This land tax in fact was a secondary resource; it was not imposed until a year after

¹ *Dinwiddie Papers*, July 24th, 1754.

² *Ibid.*, Feb. 23d, 1756.

³ *Richmond Dispatch*, Aug. 16th, 1877.

⁴ Letter of R. A. Brock, Esq., of the Virginia Historical Society.

⁵ *Burnaby Travels*, 711.

the war began, when the poll tax was reduced; and therefore its proportional rate of increase was far less; it was not augmented in March 1762, when an additional poll tax of five shillings was levied for five years; and finally the act of March 1768, which repealed all the war taxes, reduced the land tax a year earlier than the others. The revenue from the poll tax bore an ever increasing proportion of the charges upon the budget; it was 2.4 times greater than the revenues of the land tax in 1763; in 1766 it was estimated to be three times as great; and in 1769 was expected to yield four times as much.¹ This land tax was levied, as it had been a century earlier, only as a last resort, when all other expedients of loans, lotteries, customs, and excises had failed: it was reduced at the first possible opportunity, and never was expected to yield over £10,000 as in 1763, while the poll tax was calculated to produce thrice that amount.² In 1763 the poll tax alone produced more than all the other taxes, on land, on tobacco, and on slaves imported, together with the licenses, fees, and carriage duties which now appeared for the first time³ as general taxes.⁴

There is no departure in principle, then, during this war, from the course which had been customary from the settlement of the colony, of demanding all direct contributions on a *per capita* basis. The treasury notes which were issued during these years, were merely to anticipate revenue, and were not productive in themselves. We have seen that later in the 18th century, the easy expedient of indirect taxes was discovered, but their application was limited by the exigen-

¹ *Journal*, March 24th, 1763. ² *Ibid.*, February 28th, 1759. ³ Hening, vii, 640.

⁴ The revenues from the various taxes were as follows: Tithes, £24000; land £10000; export tobacco tax, £5000; slaves imported, £2000; carriage tax, fees, process taxes, *etc.*, £2000—producing a total net revenue of £39919. This is a fair indication of the proportion borne by each tax during this period.—*Journal*, May 24th, 1763.

cies of the tobacco trade, and the political influence of the Royal African Company. In short, they were of far less importance than has been generally supposed. Direct taxes for the greater portion of the time were the main items in the budget, and of these direct taxes the poll tax was the most productive. Especially for extraordinary occasions did it constitute the principal resource, both because of the failure of indirect taxes to respond readily, and because at such times, as we have seen, the tobacco trade was often completely prostrated. The two reasons why the capitation tax was popular in the Assembly were; first, that in ordinary times it did not in an agricultural community like Virginia, where property consisted largely of slaves¹ and where land was plenty and cheap, differ very widely in practice from the principle of contribution according to faculty; and secondly, that such inequality as was produced favored the class which controlled the legislature.²

This power of the landed tide-water aristocracy had been very great. Yet although it was deep rooted in the customs, traditions and law of the Commonwealth, a change was impending. The old régime had been fruitful of enormous abuses. The office of sheriff had been too often regarded as a position of profit. Being earned by a gratuitous service as justice of the peace, it was liable to be manipulated for all it was worth during the short term before the next justice in succession became entitled to the position.³ This

¹ In 1756, there were 43329 white tithables, and 60078 blacks.—*Dinwiddie Papers*, February 23d, 1756.

² Sir William Keith wrote in 1726, "Land is so plenty and to be had so very cheap in America, that there is no such thing as a tenant to be found in that country, and this makes it impracticable to find an assembly of such freeholders in any of the colonies, who will consent to lay any tax upon lands." Compare also *Burnaby's Travels in America*, 717.

³ The rule of appointment by "seniority and rotation" is well exemplified in petitions praying the favorable consideration of the executive.—*Calendar Virginia State Papers*, vi, 309-458.

mercenary estimation of the sheriff's office caused great rivalry for the place during times of prosperity, when the emolument was large; but it was a difficult matter to find men to serve in seasons of distress. Oftentimes the taxes of several counties at a time would remain uncollected for years.¹ And all payments being made in tobacco, extortionate commutation rates for money were charged in those districts where the crop failed or where tobacco could not be grown, whereby great profits accrued to the sheriff.²

This malversation of office at last extended even to the highest positions of state. The Treasurer and Speaker of the House, after the war, loaned more than £100,000 without collateral security, or even personal notes,³ to his allies, the great planters, who were overwhelmed with debts to their English factors. This man was the acknowledged leader of the aristocracy, and being threatened with exposure and ruin, as most of the debts were repudiated, his confederates nearly succeeded—so completely did they dominate the government—in a plan to transfer all these bad debts to a public land loan office. This was frustrated by a new party, which found its constituency in the upland counties.⁴ But as late as 1769 the old party succeeded in so completely covering up its tracks, that but for the timely death of the Treasurer the whole significance of the land bank scheme would never have been revealed. It was the contingent from the hardy and energetic Scotch-Irish settlers of the Western district, under the leadership of Patrick Henry, which now gradually assumed the control of affairs. This party remodeled the fiscal system on a less exclusive basis, and prepared the way for the great struggle for independence in 1774.

The Situation in 1770. After the conclusion of this first

¹ Henning viii, 201.

² *Ibid.*, 381.

³ *Journal*, November 22d, 1769

⁴ *Life of Patrick Henry*, by W. W. Henry.

war, there was a general reversion to the old system of indirect taxation whenever possible.¹ First of all, however, the staple commodity could not be heavily taxed, as on it depended the whole prosperity of the colony. When the war debt was funded, it was found that this could be done only by enormously increasing the tobacco taxes. But it was resolved that this excessive tax should be gradually refunded to the planters by means of a poll tax of 3 sh. 6 d., to continue until 1775.² The only taxes which did not bear too heavily upon the agricultural interests as such, were the customary liquor duties, and those special taxes which we have seen were developed during the late war. Coaches and chariots were taxed at twenty shillings, and two-wheeled chairs at ten shillings, by a law of 1769. Ordinary licenses were fixed at twenty shillings; and suits at law were taxed at 2s. 6d. for the general, and 1s. 3d. for the county courts respectively, in each case to be included in the bill of costs. The revenue from these was not great; their importance here is derived from the fact that they constituted the germs of that complicated system of fees and licenses which developed later to meet the needs of the matured state. When the United States absorbed all the revenue from customs duties, these excises were substituted for them. During the colonial period they were merely supplementary sources of revenue.

The colony was on the eve of a struggle for independence which would tax its resources to the uttermost. It had made good its title to the soil against the savages, but now it was called upon to cope with a power which fought upon the sea as well as upon the land. Virginia had for many years relied upon her poll taxes and the export tax

¹ "It hath been found by experience that the taxes on process, ordinary vehicles, and wheel carriages, and additional duty on slaves, and a tax on tobacco made and shipped, are easy to the people, and not so burthensome as a poll tax."—Hening, viii, 343 and 498.

² *Journal*, May 24th, 1765.

upon tobacco. But war upon the sea meant a closure of the market for tobacco, and other fiscal expedients became necessary. Moreover, the poll tax, which had sufficed for all ordinary purposes of revenue, was totally inadequate to serve as a war tax alone. At first it had been a fairly equitable tax, while land was plenty and cheap, but with the development of new conditions it had become an engine of oppression, against which a large part of the people revolted. Slavery also had taken a firm root in the colony, and the workings of the poll tax had been therefore altered for the worse. Consequently, on the outbreak of the Revolution the old question of the poll tax *versus* the property tax had to be argued anew. Then, however, the balance of power was shifted, and the former invariable result of a victory for the polls was less easy to attain. The history of the Revolutionary period marks therefore a turning-point in the history of taxation in this colony.

CHAPTER II.

THE QUIT-RENTS.

Origin and Development. The original intention of the Virginia Company after the abolition of the communistic arrangement was to promote the growth of an independent yeomanry which might hold lands for a time by a métayer tenure; but which should be gradually changed into a general system of peasant proprietorship. The early charters of 1609 and 1612 contain no mention of any perpetual tribute; lands were to be held in free and common socage; and the only rights the crown reserved were the customary fifth part of all gold and silver discovered, with a five per cent. duty on imports. But for some reason this scheme proved unsuccessful, and the custom of making large proprietary grants of land became so widespread that the influence of the Company itself was greatly impaired.¹ On the downfall of this corporation it is probable that all the lands reverted to the crown, but that the grantees were allowed to hold their estates subject to a nominal rent charge, which should be a recognition that the title to them was vested in the king. All of the patents which were granted after 1625 provided for a uniform annual rent of one shilling for every fifty acres, payable at the feast of St. Michael's, but not to commence until seven years from the date of the grant: it was also stipulated that at least three acres in every fifty should be cultivated within the first year. This was inserted to prevent any further extension of the former grants of land to

¹Doyle, 187; Neill, *Virginia Carolorum*, 56.

the king's favorites.¹ The rate thus established was not changed in theory during the colonial period, but the other restrictions were a dead letter, so that no further mention is made of them in the statutes or correspondence of the times. The king, moreover, was not bound by any law at that time; and disregard of the rights of the colonists in respect of their lands was a fruitful source of trouble, which was aggravated by the quit-rent payments exacted of all who held sub-grants of the proprietors.

The quit-rents were not regarded as a fiscal measure, or a tax; they were a recognition of the king's ultimate sovereignty, in whom the title of all lands was vested. They were essentially feudal dues, "acknowledgments His Majesty receives of the People's Tenure and Subjection."² And as such they were a convenient argument for the Burgesses at various times against the chartering of new Companies,³ or the granting of great tracts of land to the king's followers. At such times even the fiscal importance of these rents was conscientiously urged by the Burgesses, as for instance in 1631, when the Assembly declared they ought to produce £2000 a year, which the king would lose by rechartering the Company. As a matter of fact the revenue rarely exceeded one-half of this in the hands of the royal officials. Yet the latent possibilities of it proved a constant temptation to adventurers to obtain grants which should entail such payments, from which they might by industrious exploitation obtain a large income.

¹ Hening i, 228; *Calendar of State Papers, Colonial Series*, January, 1637; Doyle, 187.

² *Spoonswood Letters*.

³ "We cannot without breach of natural duty and religion give up and resign the lands which we hold from the King upon certain annual rents, to the claim of a corporation; for besides our births, our possessions enjoin us as a fealty without a salva fide alliis dominis."—*Remonstrance of the Assembly*, 1642; Hening, i, 233.

A grant of one-third of Virginia was made by Charles II in 1669 to Henry, Earl of St. Albans, and others, on consideration of an annual payment by them of £6-13-4, but it seems not to have been accepted. The revenues of the Crown were too small after the Restoration to tempt others to apply for them, and we may believe that they were scarcely worth the trouble of collection; for in 1671 the king granted them all to a "deserving servant," Col. Henry Norwood.¹ Soon after this Lord Culpepper became Governor, and through his influence at court obtained a Royal grant of all the lands in Virginia, including all former grants as well. He was to enjoy all the rents and arrears of rent for thirty-one years, and was empowered to grant parcels of land for two shillings an acre, annual rent, payable in "lawful money." The only obligation on his part was to pay forty shillings to the king as a yearly rental.² This flagrant breach of justice to all the early settlers raised such an outcry, that agents were sent to England to protest against it. It will be remembered that the taxes levied for this purpose were the occasion for the outbreak of Bacon's Rebellion.

Lord Culpepper at first offered to surrender his claim for £7000 in cash, or £1000 yearly during his term in office.³ A compromise was then arranged whereby he abandoned all his claims, except to the quit-rents and escheats, which latter due had been fixed at 2d. an acre.⁴ The most onerous condition was the obligation to pay in money, which was very scarce; but the Commissioners succeeded in compromising this, Culpepper agreeing to receive tobacco, while the colonists were to reckon it at 1½d. a lb., instead of at the rate of

¹ Hening i, 572.

² *Ibid.*, 516. The language here is ambiguous, but it appears that more than the mere commissions for collecting were implied.

³ *Sainsbury MSS.*, x, 79; Burk, ii, Appendix, xxi.

⁴ The charter of 1660 fixed these at two lbs. of tobacco per acre.

2d. which had been agreed upon in 1661.¹ The contest was long continued, until Lord Culpepper at last renounced all his claims in 1682, except to the lands lying in the Northern Neck, between the Rappahanock and Potomac Rivers; and received instead of the quit-rents for the remainder; "£600 on the establishment of the Forces for twenty years and a half."² This remained as a regular charge upon the revenue from these sources, and was administered by the King's officers.³ No further mention is made of it, but it is probable that it was scrupulously exacted during the life of Lord Culpepper at all events.

This semi-feudal system remained in force until the Revolution without any further change, and the rents in the Northern Neck continued the private property of Culpepper's heirs. In 1776 the other rents which had been paid to the king were transferred to the uses of the Commonwealth,⁴ and the next year they were abolished altogether, "that lands may not be granted on or subjected to any feudal tenure, and to prevent the danger to a free state of a perpetual revenue." The special grant to Culpepper of the Northern Neck was however not included in either of these laws; yet the planters there were allowed 2 sh. 6d. currency per hundred acres from the Commonwealth treasury as a recompense.⁵ In 1779 even these were abolished, and all lands were to be held henceforth as "absolute and unconditional property."⁶ The rents in the Northern Neck were sequestered for a time as held by "alien enemies."⁷ After the war they were reimposed; until 1785, when an act "was passed almost unanimously" which abolished them forever.⁸

¹ Hening ii, 31; Burk, ii, Appendix, xxviii and xlv.

² *Virginia Historical Register*, vol. iii, § 14; *McDonald MSS.*, vi, 299.

³ *Sainsbury MSS.*, xi, 17 and ix, 108.

⁴ Hening, ix, 127.

⁵ *Ibid.*, ix, 359.

⁶ *Ibid.*, x, 64.

⁷ *Ibid.*, xiii, 113.

⁸ *Madison's Letter*, December 24th, 1785.

Administration and Fiscal Importance. These quit-rents, which were in ordinary times the only land taxes in the colony, were collected and accounted under the direction of a special officer who was responsible to the king, and in no way constituted a part of the colonial financial system. This official was known as the Treasurer at first, and received £500 a year for his services;¹ but when the Assembly gained the right to appoint a treasurer for its own funds, he was called the Receiver General, and an Auditor was appointed to keep the accounts. The salary of both was fixed at a percentage commission on the receipts amounting to above fifteen per cent. The sheriff was the local collector, and was accountable for his funds to these officers, receiving a commission of ten per cent. for his services.² This revenue was generally farmed out by the Receiver General to some councillor, and was collected in tobacco or transfer notes,³ although it was lawfully due in money of the realm. This tobacco was then sold at "easy rates," to the Governor, or some member of the Council for money, by which operation the law was fulfilled, and the officials received a fat perquisite as well."⁴

The fund was so small after the abandonment of Culpepper's Grants, that the Commissioners of the Customs, in informing the Lords of the Treasury as to the colonial

¹ Hening i, 306, ii, 31.

² Blair and Chilton.

³ The rate at which tobacco was received in lieu of money was fixed from time to time, and shows a steady decline in the price of that staple. In 1619, it was 3 sh. and 1 sh. 6d. a lb., according to quality.—(*Journal*, 1619,) 1645, 3d. [Hening, i, 316]; 1661, 2d. (Hening, ii, 99); 1676, 1, 5d. (Burk, ii, Appendix, xlv); 1682, 1, 2d.; (*Census* 1880, sketch by R. A. Brock, Esq.) [Hening, ii, 506]; 1697, 1d. (Blair and Chilton.) During the 18th century the customary rate was one penny a pound.

⁴ The governors discouraged the use of money, as they could buy their supplies cheaper in tobacco. An ox which was worth 50 sh. or £3, he could buy for 600 lbs. of tobacco, which cost him only 4 sh. or 4 sh. 6d. a hundred weight, and so he would save about 50% on his purchase.—*Blair and Chilton*, 1697.

revenues in 1692, forgot to make any mention of the quit-rents at all.¹ Various statutes were passed during the 17th century to enforce the payment of these rents, and inducements were offered for the prompt settlement of arrears by compounding them for double;² but still the "great neglect" continued—even the penalty of absolute forfeiture of the land for non-payment for three years did not prevent the receipts from decreasing year by year. In 1631, the Burgeses affirmed it would produce £2000 a year "if duly collected," but nearly a half century later, when the population had increased eight-fold the revenue was but £1500,³ and in 1690 it was only £800.⁴

This proved to be the low water mark, however, for with the advent of Governor Spotswood there was a considerable reform in the system. When the sheriff received ten per cent. for collection, the Receiver General seven and a half per cent. for holding,⁵ and the Auditor eight and a half per cent. for accounting the rents; and when such as were paid consisted of "trash tobacco" which, poor as it was, was sold at "easy rates" to the inside members of the magic circle for current money; and when this fund, if drawn upon in England, had to be discounted nearly twenty-five per cent. below the sterling money of the realm; the wonder is not that the receipts were small, but that they amounted to anything but a deficit by the time they reached the Crown. The first step in reform was to abolish the established custom of selling the tobacco "by inch of candle" to the members of the Council.⁶ It was ordered that henceforth it should be vended by the Auditor at private sale for more remunerative

¹ *Sainsbury MSS.*, pkg., iv, 57.

² Hening i, 351, iv, 79.

³ Burk ii, Appendix, xxi.

⁴ Blair and Chilton.

⁵ *Virginia Historical Register*, iv. Col. Wm. Byrd held this office for seventeen years at seven and a half per cent. on the receipts.

⁶ *Spotswood Letters*, 1610.

rates. At the same time the penalties for non-payment of the rents were made more stringent. Another evil of the old system was "due in a great measure to the pernicious (tho' antient) practice of discharging all public debts by Tobacco paym't. This has been—the Governor declared—the occasion of making all that Trash, w'ch hath clog'd the market—many people making it for no other end than to pay off Debts and levies, for which purpose they think it good enough, how mean soever it be."¹ This was remedied by an official inspection of all tobacco which was brought to market; and it was from this beginning that the elaborate system of transfer notes was developed.

Besides all this, Governor Spotswood affirmed that for years no regular accounts had been kept,²—that all charges had been reckoned in crowns sterling, while the sales were computed in current money, whereby a profit of over nineteen per cent. accrued to the officials—and that there had been systematic collusion between the Receiver General and the Burgesses to defraud the Crown. All of these evils were remedied so far as possible, often in spite of some opposition on the part of the people. And Governor Spotswood informed the Lords of Trade that "The Scheme for improving His Majesty's quitt rents is likely to answer fully my expectations,—the Public Credit which was one main end thereof being now raised above 200 per cent."³ The revenue from this source was indeed increased for 1715–16 to about £1900, the average for five years having been but £1100;⁴ but it was not maintained, and the rents soon fell into neglect again.

Decline and Disappearance. In 1717 the Governor com-

■ *Spotswood Letters.*

¹ *Ibid.*, ii, 176. In 1711 over 10,000 acres of land were found to have been fraudulently exempted.—*Letters*, July 28th, 1711. ² *Ibid.*, March 28th, 1715.

⁴ *Ibid.* Oldmixon declares the yield in 1703 was £1200.

plained once more that three million acres which should have paid £3000, did not in fact produce a half of it; that it cost ten to fourteen per cent. to collect these rents;—and that the officials indulged the planters by accepting tobacco at one penny a pound “which was not worth the half of it.” This habitual neglect and fraud continued during the whole colonial period; for as late as 1755 a law was passed which declared it to be almost impossible to obtain a judgment against a sheriff for the non-payment of the rents collected. The county courts were composed of landlords, and they were loth to render a decision in such cases; so that, even if collected, the Crown oftentimes could not obtain the proceeds from the sheriffs or collectors. By 1738, the revenue from this source was estimated at about £3500,¹ although it is doubtful if the actual proceeds ever reached that amount. The tax became more and more unpopular with the people, and proved more difficult to collect with the spirit of opposition to the rule of Great Britain.

The opposition to the quit-rents on the part of the colony was threefold in its nature. The first reason was because it was a land tax which, though small, was unpopular with the landed aristocracy. Secondly, the early forms of it required payment in money, which was extremely scarce and was always at a considerable premium. At several times the people openly refused to pay in this way—the assembly even passed a law providing for payment in tobacco, and refused to repeal it at the Governor’s request. But after “boldly disputing” his right to demand money, they became more humble, and petitioned for commutation, which was granted at the rate of a penny a pound.² The third reason for its

¹ *History of the British Plantations in America*, by Sir Wm. Keith.

² *McDonald MSS.*, November 20th, 1685.

unpopularity was that the quit-rents constituted a fund which was beyond the control of the Burgesses, and served to give independence to the royal officials.¹ During the Commonwealth, the fund seems to have been devoted to the regular governmental expenses.² The opposition to a return to the old system after 1660 was so great that the sheriffs would not collect the rents, and a law had to be passed to compel them to serve.³

During the seventeenth century the English sovereigns seem to have been willing to allow the proceeds of the quit-rents to remain in Virginia, as a resource for extraordinary occasions. No drafts were made upon it, and upon petition, grants were allowed by the king in aid of the regular income. In 1698 we find £2955 granted from it toward payment of general expenses, the petition of the Receiver General declaring it "hath been usual in the like cases."⁴ And a few years later there was nearly £6000 in the Auditor's hands.⁵ But several changes soon ensued: Governor Spotswood reformed the system and compelled a more prompt settlement in good tobacco; there was considerable distress in the tobacco trade, and the distaste for direct taxes was increasing. Finally, the policy was inaugurated by the Crown about this time, of drawing upon the quit-rent fund as fast as it was paid in⁶—nay more, it was often overdrawn, as in 1714 when £3000, three times the annual revenue, was called for. The receipts from the two-shilling export tax were exceedingly small during that year, and the matter was brought to a head when the Assembly petitioned that the quit-rent fund might be devoted to the regular charges of government for the time being. This request was ignored,

¹ *Sainsbury MSS.*, xi, 231.

² Hening i, 306.

³ Hening ii, 83.

⁴ *Calendar Virginia State Papers*, i, 58-177.

⁵ *Virginia Historical Register*, iii, 14. ⁶ *Spotswood Letters*, June 2nd, 1713.

whereupon the Burgesses repeated it,¹ enforcing their demands by a resolve to lay no more taxes until an answer was returned.² It was a curious struggle, partly constitutional, yet tinged with personal interests. The Governor seems to have been willing to concede the request of the legislature, but in a letter to the Council prayed earnestly that an answer, if favorable, should be returned to him, so that he could use it with proper effect upon the Burgesses.³ It is probable that the Assembly won its way for the time, for a donation of £300 is recorded out of the quit-rents. The constitutional question, however, was left as undecided as before.

Thus the matter rested for a time, but the opposition was often quite violent on occasions, as in 1716, when an attempt was made to draw up a new and more complete rent roll than one made about the middle of the previous century. It was as a partial consequence of this struggle that Colonel Ludwell was dismissed from the office of Receiver General, because he refused to yield to the Governor's request for fuller accounts and stricter methods. The Crown, however, strictly maintained its rights in the matter, although they were questioned once more in 1719.⁴ Donations were made from time to time toward the support of the college, as had been done in 1692 and 1726; or in 1717 to eke out salaries of various officials and pay war expenses, but these were merely as

¹ *Journal*, October 24th, 1715.

² "Upon a diligent search of Precedents here the like deficiencies were formerly made good, We find it has always been out of the Fund of the quit rents Which used to be received in this Countrey ready upon all such occasions, and proved exceedingly Serviceable in cases of Sudden emergency, 'till about nine year ago (1705) they were called in to the Exchequer in England—So there is no obtaining them but by repeated applications to the Throne, wch cannot be made without great charge and difficulty."—*Calendar of the Virginia State Papers*, pg. 177.

³ *Spotswood Letters*, 1715.

⁴ *Ibid.*, March 25th, 1719.

⁵ Blair and Chilton, and *Virginia Historical Register*, iii.

marks of royal favour.¹ After the second decade of the century, but little mention is made of these rents. That they existed, however, is shown by a law of 1755, which declared that treasury notes would not be receivable in payment of such dues. It is probable that the growth of the colony, especially the development of the western country, and the general opposition to all interference on the part of the Crown, led gradually to the abolition of these feudal dues as one of the first measures of the Revolutionary Assembly. It had served as a very convenient excuse for the exemption of all the land from taxation; the revenue from it was not sufficient to make it a fiscal resource of any importance; so that with the growth of the democratic and independent spirit of the Virginia patriots, it was gladly swept away. Its history is interesting, as it was one of the few examples of feudal institutions which have ever survived for any length of time on this continent. It shows the essential difference in social ideas which divided the North from the South, but it perished with all other minor differences through the growth of a national spirit.

¹ John Davis, *Travels*, 390.

CHAPTER III.

CUSTOMS DUTIES.

History of the Tax upon Tobacco Exported. The government of Virginia manifested a great interest in the prosperity of the tobacco crop from the earliest days. It was plain to all that the welfare of the whole colony was inseparably bound up with the rise or fall in the price of this staple commodity. The histories of the time abound with examples of interference with the affairs of the settlers, either by an absolute prohibition of planting, by limitation of the amount which could be raised, or by regulation of the price which should be demanded. Yet for many years the possibility of deriving a direct revenue for the support of the state from this source, was not recognized. As late as 1654, an act was passed which granted a free export of tobacco, subject to no "taxe or custome whatsoever."¹ Indeed, the primary consideration in a tax of this nature, was by no means merely fiscal. The causes of the first duty on tobacco were threefold; first, in order that they might with "most honor & ease support the government in well paying of its officers;" secondly, "as means perhaps of introducing money;" and finally as "an encouragement to men to produce other usefull and beneficiall commodities." The last consideration was closely allied to the customary policy of the early Virginia Company, which had always been to direct the attention of the planters to other crops of more "staple" products. They wished to avoid a concentration

¹ Henning i, 413.

of all interests in one direction, as it involved the danger of famine and distress which are always attendant upon the cultivation of a single crop.

In conformity with these principles, a shilling a hogshead was levied in 1657 upon all tobacco exported, to be accounted by the masters of vessels.¹ This revenue was to be devoted to the payment of the Governor's salary of £600, for which at this time the Assembly was solely responsible. This tax does not seem to have been very satisfactory, for it was repealed the following year, because "certaine inconveniences have been found in the manner of collecting to which an apt remedie could not be applied." The next year it was reimposed at ten shillings per hogshead upon all tobacco not exported to England.² This was a prohibitive tariff directed against the Dutch, as was also an act of 1657. It was not intended to produce revenue. The mother country was contesting for commercial supremacy upon the sea, and the colony was bound to lend its aid to the project. This act of 1658 remained in force for some time, although the New England vessels were exempted from the duty in 1665. This was done because the act had "drawne much trade into Marryland," the lower duties upon tobacco there operating as a bounty upon the export of tobacco.

The policy of the colony in taxing tobacco to this time had been rather political than fiscal in its nature. It was merely incidental to the general colonial policy of Great Britain. The first duty which was laid for revenue purposes primarily was that of 1661, when a tax of two shillings a hogshead was imposed upon all tobacco exported from Virginia.³ Collectors were appointed by the Assembly; they were to receive salaries of ten per cent. on their receipts, and all the machinery of administration was to be subject to the control

¹ Henning i, 410.

² *Ibid.*, 498, 523 and 536.

³ *Ibid.* ii, 130.

of the legislature. The revenue was to constitute a fund from which the regular expenses of government were to be defrayed, since the Assembly had accepted the changed condition of officers in England, and assented to the return of Governor Berkeley upon the old terms in force before the Commonwealth. This law is the pattern from which all the later acts were copied; and the nominal rate therein established remained constant for a century and a half. It was supplemented by an act of 1663, providing that duties should no longer be receivable in "refuse contemptible goods," but must be paid in money or good tobacco.¹ Before long the planters tried to evade the tax by exporting their tobacco in bulk, so that the duty of two shillings was likewise laid upon every 500 lbs. so shipped.² Beyond this there was little change in the form of the duty, the only modifications being to secure a more complete return from shipmasters, in order to prevent smuggling. It was re-enacted in 1705, and from time to time until the Revolution, the rate being two shillings per hogshead.³

We have seen from a study of the quit-rents how the price of tobacco tended to decrease during the seventeenth and eighteenth centuries: some compensation had to be made for this, else would the tax have become exceedingly onerous if the nominal rate of duty had not been reduced in some way. The cask or hogshead, which at first was fixed at 500 lbs. weight, was finally increased to nearly double, *viz.* 900 lbs. net, which of course was tantamount to a reduction of the rate, the charge per hogshead being constant. In 1769⁴ the rate was reduced to 1 sh. 6 d. for two years; it should be noted, at just the time when the poll taxes were being continued at a high level to pay off the war debt. The reason for this

¹ Henning ii, 186.

² *Ibid.*, 413.

³ *Ibid.* iii, 344, and vii, 77-259, 333.

⁴ *Ibid.* viii, 345.

seeming inconsistency was, however, that other duties had become necessary upon the export trade, in order to compensate sufferers from losses by fire and flood in several of the tobacco warehouses. It must be remembered that the Commonwealth was responsible for all tobacco stored in these public warehouses, for which transfer notes had been issued, so that these various losses often constituted a considerable charge upon the budget. Then again there had long been¹ a duty of 1 d. a lb. on tobacco for the benefit of the College of William and Mary, which was a public institution in many respects. This it is true did not yield a very considerable revenue, but it was at least a figure upon the statute books, and was an argument against the further increase of the customary duty upon tobacco.

In 1776, it was enacted that "all duties and taxes shall cease to be collected upon any tobacco to be shipped from this country."² Moreover all exports to Great Britain were forbidden, and bonds of £1000 were required of every shipmaster that he would not land his cargo in any part of his Majesty's kingdom. All liability of the State for losses of tobacco in any warehouses was removed, and the way cleared for a reorganization of the whole system. At the following session of the assembly the rate of duty upon all tobacco exported was fixed at ten shillings per hogshead.³ This war rate corresponded to the various taxes which were laid at the same time; but the French West Indies were at first excluded from the provisions of the act, by reason of the treaty with France.⁴ This was, however, settled by agreement in 1779, so that when the duty was raised to thirty shillings during the next year it was applied to all exports uniformly.⁵ The purpose seems to have been to direct the planters rather

¹ Hening ii, 429, 692; vi, 91.

² *Ibid.* ix, 162.

³ *Ibid.*, 350.

⁴ *Ibid.*, 551.

⁵ *Ibid.* x, 13.

to the cultivation of necessary commodities by making this tobacco trade unprofitable. There was great scarcity of the ordinary food supply; and at one time salt was urgently needed, so much that free export of one hogshead of tobacco was allowed for every five bushels of salt imported.¹

This ruinous rate of thirty shillings was not maintained throughout the war. It was clearly prohibitive, except so far as smuggling was concerned. And after the cessation of hostilities the colony was so completely prostrated that every effort was directed toward a removal of all restraints upon the revival of international trade. There was no longer danger of famine; the embargoes had been raised, and the encouragement of the staple industry was the surest way to prosperity. Consequently the rate of this duty was reduced to eight shillings in 1781, and again to four shillings two years later. The Confederate Congress made a requisition upon the Commonwealth in 1787 for \$90,000, and six shillings additional was levied to raise this money. But the repeal of the requisition following shortly afterward, the product of this extra tax was transferred to a newly created sinking fund.² It lasted but a year, and the general tendency remained as before in favor of a reduction of the tobacco duties as speedily as possible.

After 1789, all duties upon commerce were forbidden to the separate states, and it became necessary to recognize a new principle, if this charge were to be continued. The inspection of this staple was still necessary in order to maintain its price abroad, although the old tobacco currency had fallen into disuse. And the expenses of storing, weighing and inspection were considerable. Therefore, the old duty was reimposed at six shillings a hogshead, and so continued until 1809, when private inspection was authorized instead.³

¹ Hening x, 149.

² *Ibid.* xii, 288, 453.

³ Shephard's *Statutes*, 1809, 55.

The charge was then fixed at \$1.75 a hogshead, but it was merely as a fee to cover the cost entailed. This fee was also probably for a partial guarantee against loss by fire, and may be regarded as an insurance premium.¹ We shall see later, that with economies in the methods of inspection this fee inadvertently developed into a real tax, yielding upwards of \$18,000 a year, so that it had to be reduced to conform to the provisions of the Constitution of the United States.²

The Fiscal Importance of this Tax. What part did this duty play in the colonial budget? How much revenue did it produce? It must be remembered that it was first laid at a time when the Assembly was responsible for all the charges of the government, and when it could itself regulate the amount of its expenses, the Governor being its creature. Then came the Restoration, and the return of the old Royal officials, whose salaries had to be paid in some way. The Assembly therefore extended this novel revenue during the next few years, and it served henceforth for the support of the Royal establishment. It was devoted exclusively to this purpose, was granted to the king, and was audited by the Royal officials.³ In 1671 about 15-20,000 hogsheads were exported yearly, which would be equivalent to £1500 or more.⁴ Of this the Governor received £1200 and the Council £350, so that deficits in the fund were not infrequent. During the next thirty years the gross revenue amounted to

¹ The old liability for losses in the public warehouses had been resumed with the rehabilitation of the tobacco currency. A tax of three shillings a hogshead, for instance, was levied for several years to cover a loss at Rocky Ridge in 1785. —Hening xi, 393.

² *Calendar Virginia State Papers*, July 21st, 1789.

³ *McDonald MSS.*, October 10th, 1676.

⁴ Burk ii; Grahame's *Rise and Progress of the United States*; Hening, ii, 516, and Chalmers' *Political Annals*.

£2-3000 annually.¹ The export varied enormously with the accidents of the season, but it averaged 30,000 hogsheads during this period,² which at two shillings would produce about £3000.

During the eighteenth century the revenue did not increase very rapidly. The second decade was even marked by a considerable deficit in the public revenues. This was owing, so far as this export duty was concerned, to the low price of tobacco which prevailed from 1705 to 1714, and which greatly discouraged the foreign trade.³ There was also another reason, namely, the exemption from all duties, of goods shipped in Virginia vessels. As the Governor explained the matter, "the Revenue must necessarily decrease the more the Inhabitants fall into Trade, seeing their Vessels are exempted from paying all those Duties by w^{ch} it is rais'd."⁴ Oldmixon states that even as late as 1734 the revenue from the export tax was only £3200,⁵ and Governor Dinwiddie, twenty years later, complained that this two shilling tax did not even suffice to pay the regular salaries.⁶ This last instance, however, was probably due to the exigencies of the French and Indian War, which prostrated all foreign commerce. It seems as if the revenue ought to have been considerable, for the exports of tobacco nearly doubled after 1750, being 40-50,000 hogsheads on the average, and sometimes exceed-

¹ The product was £2781 in 1675. [McDonald MSS.] In June, 1676, £2377 was paid from the fund. [Sainsbury MSS.] In 1688 £3731, and 1696 £2500. [*Ibid.*] By 1697 it amounted to £3000, but the shipmasters received ten per cent., the collector ten per cent., the auditor seven and one-half per cent., and the salaries themselves were £2500 a year.

² Oldmixon; *Tenth Census, History of Tobacco*, by R. A. Brock, Esq.

³ *Calendar Virginia State Papers*, i, 177, and Sainsbury MSS.

⁴ *Spotswood Letters*, October 24th, 1715.

⁵ Keith's *History of the British Plantations* gives a similar revenue in 1738.

⁶ *Dinwiddie Letters*, i, 343.

ing 60,000.¹ After the war the product of this tax was computed in the budget at £5000, and probably remained near that figure until the Revolution. The fees and expenses of collection were very large, and all of the remainder, the net revenue, was devoted almost exclusively to the payment of salaries, since the Assembly, it will be remembered, relied upon other taxes for its contingent expenses.

We have seen that although the revenue from these tobacco duties was not more than sufficient to maintain the Royal officials, yet since for many years the salaries constituted the principal charge upon the budget, the export tax upon tobacco was the only indirect tax which was of any great fiscal importance. It will be interesting therefore to see whether it was a profitable expedient for the assembly to employ in lieu of other taxes. Tobacco was a luxury; it commanded a high price; and the only important rivals of the Southern colonies of America in the European markets were the Spanish possessions, so that for many years the trade was very profitable to the planters. But the sovereigns of Great Britain soon perceived this fact, and proceeded to suck as much profit from it as could be attained. The whole history of Virginia is filled with discussions and complaints of the policy of England in this regard from the time of the memorable contracts of James I to the Revolution. Petition after petition was sent to Parliament asking for relief, either by the grant of free export to Continental countries, or by a reduction of the existing duties on tobacco in England. The revenue of Great Britain from tobacco duties was enormously increased after the Restoration, and by the mid-

¹ The exports of tobacco in 1740 amounted to about thirty thousand hogsheads, which would produce but £3000. (*U. S. Census*, 1880.) In 1759 fifty to sixty thousand hogsheads were exported. (*Burnaby's Travels*.) In 1758 they amounted to seventy thousand hogsheads. See also *Dinwiddie Papers*, October 25th, 1754.

dle of the eighteenth century was about £3-400,000 a year.¹ When it is considered that about 6d. a lb. custom duty was charged in England, that no tobacco could be exported elsewhere, that it cost about £6 a hogshead to ship it from Virginia to the market,² and that the proceeds were generally returned in goods upon which a considerable profit, besides all freight charges, was laid,—it will appear that this trade was sufficiently burdened without adding another export duty of two or even six shillings a hogshead upon the tobacco from Virginia.

All of the contemporary writers tell of the frequent distress occasioned by this combination of restraints, especially after 1700. In 1685, many hogsheads of tobacco were sold at twelve pence apiece, it is said, rather than pay the various duties and freights.³ Upon the accession of James II the duties had been considerably raised "in a warm fit of loyalty," so that even the Governor was forced to admit that he had observed "since ye additional duty hath been laid on tobacco, many seem to be discouraged, either from shipping present or planting future crops."⁴ It was furthermore alleged that even before the increase of the duty, tobacco had often been sold at a loss. We are told again in 1724⁵ that

¹ Oldmixon, 320; Grahame's *Rise and Progress of the United States*; also Burk, iii, 136; *McDonald Papers*, v, p. 1, and Hall's *History of the English Customs*.

² The prices for tobacco in Virginia in 1732 were from two to three and one-half pence a pound, while it sold for seven pence in England. The incidental charges per hogshead had been only about seven shillings eight pence in 1694, but during the eighteenth century contemporary accounts show that the net proceeds were ridiculously low. For instance one shipment of six hogsheads, averaging nine hundred to one thousand pounds each, yielded to the planter but £15-2-8 net. It will be clear that such profits could not withstand a great deal of discouragement without being swallowed up entirely.—U. S. Census 1880, *History of Tobacco*, by R. A. Brock, Esq.

³ Oldmixon, 263.

⁴ *McDonald MSS.*, November 14th, 1685.

⁵ A frequent practice was that of "running tobacco, or entering all light hogsheads at importation (into England), which in their language is called 'Hickory

the losses upon tobacco were frequently very heavy, and the expedients for avoiding payment of the duties were many and intricate. Twenty years later the Assembly represented "the distressed State and Decay of our Tobacco Trade occasioned by the Restraint on our Export, which must if not speedily remedied destroy our Staple," and they prayed for "a free export of their Tobacco to foreign Markets directly."

Yet the colony was not completely at the mercy of Great Britain, for despite their greed the English sovereigns were limited by their own policy in the exactions which they could demand. They dared not tax the tobacco trade too heavily.² Governor Spotswood, for instance, relating that in one of the best tobacco counties there had been a great deal of hemp and flax raised, which had been made into cloth, added, "it is certainly necessary to divert their Applications to some other Commodity that may be beneficial, or at least less prejudicial to the Trade of Great Britain."³ This then was the only restraint which was put upon England in furthering her colonial policy. Tobacco was surely the safest crop which Virginia could raise; and so it was taxed to the utmost limit, which would not divert her attention to products which competed with British commodities in foreign countries.

In view of all these facts it seems at first sight that the attempt to raise a revenue from the tobacco exports was merely to overload a sinking ship. But, as was urged again and pucker,' and then again by getting a debenture for tobacco that has been run, or entering all heavy hogsheads for exportation, which they call 'Puckery hickory,' after which it is said that the same tobacco has been runned into some neighboring port."—*Present State of Virginia*, Hugh Jones, A. M.

¹ "It must be owned that the Multiplicity of Duties, Drawbacks, Bonds and other Regulations of the Customs, wherewith that Trade is perplexed, has in a Manner forced the Merchant into many little Contrivances which in all probability would otherwise never have been thought on."—Keith's *History of the British Plantations in America*, London, 1738.

² Burk iii, 136.

³ *Spotswood Letters*, May 20th, 1710.

again, there was no power to levy import duties, and there was but one export of any importance. Consequently this was taxed, the people meanwhile deluding themselves with the notion that because the tax was not taken directly from their pockets, it was paid by the foreign buyer. The only justification for the duty on fiscal grounds was perhaps that the tobacco trade would have been taxed to the verge of destruction in any case, that being the express policy of England, and therefore that Virginia might as well get what was possible from it herself, else it would be taken at the other end of the line. This export duty was common to most of the southern colonies, and perhaps under the circumstances it was as good an expedient as could be devised for dealing with the mother country. Its tendency, at all events, was to equalize somewhat the distribution of public burdens, since it fell with particular severity upon the planters who favored themselves, as was natural, perhaps, in every other way. But at the same time the revenue was exceedingly variable; it depended upon the most uncertain factor of all things earthly, the weather; it was conditioned by the particular fiscal needs of the Parliament in England, and was moreover liable to complete destruction by any change in the foreign policy of that body, which might bring on a war or open the way to commercial competition from the Spanish rivals in the tobacco trade. Thus it was good so far as it went, but it will readily be seen that it was ill adapted to serve as a fiscal basis for a developed state. Other more stable taxes were necessary, and there was but one of these which the Burgesses would allow.

The Import Duty upon Liquors. The Virginia Company by the charter of 1606 was allowed to take provisions, arms, ammunition and clothing from England duty free for a period of seven years,¹ and was also granted the right of imposing

¹ Hening i, 63.

certain import duties upon these goods in Virginia. The letters-patent given to Sir Thomas Gates conferred authority "to take and surprise by all ways and means whatsoever all and every person or persons which shall be found trafficking into any harbour or place within the limits of the said colony until they, being of any realms under our obedience shall pay two and a half upon every hundred of anything so by them trafficked; and being strangers, until they shall pay five upon every hundred of such wares and merchandises; which sums of money during the space of one and twenty years shall be wholly employed to the use, benefit and behoof of the several plantations; and after the said one and twenty years ended, the same shall be taken to the use of us, our heirs and successors."¹

The charter of 1609 continued this grant at the higher rate of five per cent. respectively for twenty-one years, but reserved the right to impose duties of five per cent. on all imports into Great Britain, which privilege was reënacted in the third charter of 1611. For many years after the abolition of the Company the possibility or expediency of imposing duties upon imports seems not to have been noticed.² It is doubtful indeed if any power was recognized by Great Britain. No mention of such a right is contained in the charter of 1676. It was only after the enormous extension of this method of raising a public revenue by the Long Parliament of Great Britain³ and its successors, that this scheme for lessening the poll levy was devised. In the meantime the new commercial policy of Great Britain was inaugurated, which imposed very considerable limitations upon the power of the Colonies to tax their imported commodities. A statute passed in 1663 continued the policy of Cromwell, pro-

¹ Alex. Brown, *Genesis of the United States*, p. 60.

² Hening ii, 531.

³ Hubert Hall, *Customs Revenue in England*, i, 180.

hibiting the colonies from receiving any goods except from English vessels;¹ and an act of 1672 effectually prevented all exchange of goods between the colonies themselves. A duty of 6d. a gallon for rum and 1d. a pound on sugar was imposed in 1661, though rather as a sumptuary act² than for purposes of revenue. But it proved difficult to administer and was repealed a year after going into effect, principally because of "the obstructions it may bring to the trade of the country."³

For twenty years there was no further mention of import duties of any kind, and Governor Berkeley reported in 1671 that "no goods either exported or imported pay any the least duties here, only two shillings the hogshead on tobacco exported."⁴ The next mention of any duties upon imports is contained in the instructions of Francis, Lord Howard of Effingham, who was sent over as Governor to succeed Lord Culpepper. He was therein advised to "recommend to the General Assembly the consideration and settling of such a way of raising money upon necessary occasions as shall be more equal and acceptable to our subjects than the present method of levying the same by Poll of Tytheable:"⁵ and the suggestion was made that an import duty on liquors be imposed. Beyond this there seems to have been no authority to lay such a duty, for no previous charter contained any provision for such an act. We may suppose that this recommendation was favorably received, for in the next year a duty of 3d. a gallon was levied on "wines of all sorts whatsoever, brandy, rum, or any other spirits, imported,"⁶ for the

¹ 15 Car. II, 17.

² The preamble of this act recites that "Whereas the excessive abuse of rum hath by experience been found to bring diseases and death to diverse people, and the purchasing thereof made by the exportation and unfurnishing the country of its owne supply and staple commodities; It is enacted," *etc.*—Hening, ii, 128.

³ Hening ii, 212.

⁴ *Ibid.*, 516.

⁵ *McDonald MSS*, October 24th, 1683.

⁶ Hening iii, 23.

special purpose of building a new Court House for the sitting of the General Assembly. This act was to continue in force for three years; collectors were appointed to be responsible to the Assembly, and the extreme penalty of forfeiture of the vessel and furniture was imposed for neglect to report to the collectors before breaking bulk. All vessels built in Virginia, however, were to have a free entry for their cargoes. This act was continued till 1691, and raised about £600 a year on the average.¹ At that time the rates were changed somewhat, 4d. a gallon being levied upon all liquors imported by foreigners in foreign-built ships, while but 2d. was charged for such ships as were owned in Virginia, in which the importer had an interest. Virginia-built ships were to be exempted from the operation of the law.² Four years later when the act was continued, the home government assented to it only on condition that all liquors coming directly from England, Wales, or the town of Berwick upon Tweed, should be exempted from the duty, the intention being to draw all the revenue from the trade with the Spanish West Indies. At the same time the rate was made uniform at four pence a gallon. In 1699, ale and beer were taxed for the first time at one penny a gallon.³

The revenue from this source was now quite an item in the budgets, since it produced £600 a year, nearly a quarter of the product of the duty upon tobacco exported.⁴ The Burgesses in 1705 declared its operation to have been "very usefull and advantageous, and that no better expedient can be found to defray the charge of any publick design than impositions of that nature." Rum, brandy, and spirits were rated at six pence the gallon, except from the West Indies, for which the rate was fixed at four pence; wines were taxed four pence a

¹ Burk ii, Appendix, xxi.

² Henning iii, 88.

³ *Ibid.*, 129-188.

⁴ Oldmixon, 298, and *Calendar Virginia State Papers*, i, 124.

gallon in all cases, and cider, beer, and ale paid one penny a gallon. All liquors from England were to come in free of duty. This act expired by limitation in 1707, and there is no further record of a reimposition of any duties upon liquors or slaves for nearly twenty years. Nevertheless we have proof that the acts continued in force, for Governor Spotswood reported in 1718 "the greatest Bank of money known,—arisen by duties laid by Foreign Importation." He affirmed that the duty upon liquors and slaves together had, during eight years, built a house for the Governor, assisted North Carolina in an Indian war, fortified the frontier, built magazines, and helped to build a church, there being still £17872 left in the bank.² Much of this undoubtedly came from the duty upon slaves, but it is probable also that the imports of liquor were very considerable in amount.

The influence of the Royal African Company in 1705 caused a veto of the slave duty by the Crown, but Governor Drysdale informed the Assembly at that time that "a duty on liquors being expressly recommended in my instructions, if you think fit to enact it by itself I am persuaded it will meet with approbation at home."³ In pursuance of this recommendation the Burgesses imposed a duty of three pence a gallon upon rum, brandy, wine, and spirits; and one penny a gallon on ale and beer to constitute a general fund for appropriation by the assembly. At the same time an additional duty of one penny a gallon was levied for twenty-one years, from the proceeds of which £200 annually were appropriated to the use of the College of William and Mary, which had previously been supported by occasional grants of money from the quit-rent fund. These duties were continued from time to time⁴ at the rate of three pence a gallon, for twenty

¹ *Letters*, April 23d, 1718.

² *Spotswood Letters*, May 26th, 1719.

³ *Virginia Historical Register*, 1850, vol. iv.

⁴ *Hening* iv, 142, 276, 310, 394, 470; v, 26, 162, 236.

years without change, except that in 1736 it became necessary to extend the provisions of the act to cover imports by land, as a lucrative trade had sprung up by importing liquors from the colonies. The rates were reduced somewhat in 1745, being fixed at two pence a gallon for spirits, and one penny a gallon for ale and beer; but in the following year the old rate was restored,¹ in order to provide a fund for rebuilding the capitol, which had been destroyed by fire. This rate of three pence a gallon was continued down to the time of the Revolution, when it was doubled, and all distillers were made liable to the payment of it as well as those who imported the liquors. The duty of one penny a gallon on beer and ale however was abolished in 1768.² The only other duty on liquors which was at any time levied by the Assembly was a tax of four pence a gallon upon the product of the French colonies, which were carrying on a prosperous trade by exchanging rum for provisions;³ this was in force but eight years, and was imposed for political rather than fiscal reasons.

There are no direct statements of the productiveness of this duty; as we have seen, it yielded about £600 a year in the latter half of the seventeenth century; and it is improbable that it ever amounted to more than £1,000 a year previous to the Revolution.⁴ The principal reason for this was, that, although a great quantity of liquor was consumed in the colony, the facilities for smuggling were very great, owing to the great extent of the sea-coast, and the number of bays and inlets. The rate was fixed as high as it was deemed expedient to do so; but the administrative details of the statutes, and the severity of the penalties for evasion of the duty, show plainly that it was difficult to prevent fraud. The liquor duties were a source of revenue which were incapable

¹ Hening v, 311; vi, 194.

² *Ibid.*, ix, 350; viii, 335.

³ *Ibid.*, vi, 471; vii, 274.

⁴ *Journal*, May 24th, 1763.

of expansion above a certain maximum. Three pence a gallon was the highest rate which was practicable. And the further productiveness of the tax depended solely upon the amount of the domestic consumption.

The Duty upon Slaves Imported. The laborers upon the plantations in Virginia during the first half of the seventeenth century were almost exclusively indentured white servants. In 1649 there were but three hundred negroes in the colony.¹ As a consequence there could be little revenue obtained from a tax upon slaves, for the institution of negro slavery was not developed until a later time. The only duties that were imposed at all were nominal fees required from all immigrants. In 1633 a duty of 64 lbs. of tobacco was laid upon all new comers who planted tobacco within a year of their arrival.² But it was a part of the customary policy of restricting the amount of the tobacco crop rather than as a fiscal measure. Too great need was there for laborers and colonists to allow any extension of this restrictive system, and it lasted but a year. In fact there was virtually a bounty rather than a tax upon immigrants then in existence, by reason of a law which allowed a minimum rate of duty upon tobacco exported, which had been exchanged for slaves brought to the colony.³

Governor Berkeley affirmed that a certain duty upon slaves produced £600 a year in 1671, but there is no recorded statute of such a nature until 1699. At that time it became necessary to rebuild the Capitol, destroyed by fire, and the Assembly took occasion to levy a special tax upon all new comers. The old system of indentured white labor was being gradually superseded by negro slavery, owing to the fostering care of the Royal African Colony.⁴ That the

¹ *Supra*, page 37.

² Hening i, 222.

³ Chas. Campbell, *History of Virginia*; Hening i, 535.

⁴ Doyle, 385.

system then in vogue was a mixed one is manifested by the provisions of the act, which imposed a duty of fifteen shillings upon every white servant not coming out of England, while a tax of twenty shillings was levied upon every negro imported.¹ This proved to be highly successful, as slaves were being imported in great numbers, so that in 1705 the duty upon negro slaves was continued.² The tax upon indentured white servants apparently fell into disuse with the decay of the system. Yet in this same year a duty of six pence a poll was laid upon all passengers in merchant vessels. This remained in force until the Revolution, although it was not stringently enforced, and produced but little revenue.³

The slave trade began to assume alarming proportions at the beginning of the eighteenth century. The governors of all the American colonies were instructed to watch over the interests of the Royal African Company, and the British government entered into several treaties with foreign powers to insure its proper encouragement.⁴ But now the Burgesses

¹ Hening iii, 192.

² *Ibid.*, ii, 229.

³ *Ibid.*, iii, 346; *Dinwiddie Papers*.

⁴ In the last two decades of the 17th century there was a very great demand for negro slaves in the Spanish colonies of America, and contracts were made by Spain with the Guinea Company, as well as with many private individuals to supply the demand by imports, which were known as "el asiento de negres." The British Royal African Company being very desirous of participating in the benefits of this traffic, in 1688 addressed a memorial to the king on the subject, and negotiations to that end were instituted. Spain, however, demanded reciprocal rights; that is to say, permission to import negroes into the English colonies; but the Crown lawyers held that such an act would be a violation of the Navigation Acts, which prohibited all imports of "goods or commodities," except in British ships. The opinion was held that "negroes are merchandise, and can no more be exported by the Act than any other goods" (Chalmers, *Opinions of Eminent Lawyers*, ii, 263). Consequently the proposition failed; but in the reign of Queen Anne a more determined attitude was taken toward Spain, and the Treaty of Utrecht authorized a joint contract for the importation of 144,000 negroes in 30 years into the Spanish colonies.—*Life of R. B. Taney*, by Samuel Tyler, LL. D., Appendix, p. 580, *et seq.*; *Sainsbury MSS.*, Doyle, 386.

suddenly awakened to a sense of the impending danger, as Massachusetts had done five years before.¹ They raised the duty upon all slaves imported by water from twenty shillings to £5, applying it to Indians as well as negroes, despite the Governor's protest. The Royal officials including the Council were desirous of continuing the traffic, as they derived a considerable profit from it. They urged the repeal of the duty, although they were obliged to confess "it is really true—that the country is already ruined by the great numbers of slaves imported of late years."²

The colonial policy of Great Britain during the next few decades became more and more unbearable. There is no blacker crime in the history of England than the persistency with which she forced the negro slave upon her American colonies. It was a deliberate prostitution of the national honor and the acknowledged interests of the colonies, for the sake of the immediate profit which accrued to the Crown. The colonial records are filled with instances of brutal attempts to override the remonstrances of the provincial legislatures against the extension of this trade. To be sure these protests were not based on moral grounds; but they represented nevertheless the real view of the colonists as to the effect of slavery upon the material welfare of their social body. And the earnestness of their opinions is evidenced by the fact that the Assemblies in urging the restriction of this traffic, did so at the risk of sacrificing a considerable revenue.

This prohibitive duty expired by limitation in 1718, but it was reimposed in 1724 at a slightly lower rate. By this time the British government decided to take a firm stand on the question, and the act was disallowed. Their veto was based upon a report of the Privy Council, which recited that this

¹ Douglas, 87.

² *Spotswood Letters*, October 24th, 1710.

"duty (£5) continued from 1710 to 1718, and tho' no Considerable objections were made at that time, yet it appears that by the price the negroes then bore, and by the smallness of the number that were imported in three years, in proportion to what have been imported since those acts expired, and the numbers that are necessarily wanted annually in ye Colony, This duty must have been a great hindrance to the Negroe Trade, as well as a Burthen upon the Poore Planters. And it further appears That this Act lays the Duty on the Importer, whereby the Trade of Great Britain will be affected."

The Burgesses renewed the attempt to reimpose the tax two years later, but with the same result.¹ The Governor reported on March 12th, 1626: "You laid a duty on liquors and slaves imported, as had been done by former Assemblies with very good effect; But the Interfering interest of the African Company has deprived us of that advantage, and has obtained a repeal of that law."² The other colonies seem to have offered so much opposition to the repeal of similar duties that the Crown was finally induced to consider their rights in the matter. A circular letter of October 14th, 1729, was addressed to the Governors of all the colonies in America, instructing them to use their influence, though not their authority, to procure substitute acts for those imposing import duties upon negroes. The reasons assigned were that such acts raise the price of labor and put England at a disadvantage in competition with her rivals in foreign trade.³ The Assembly of Virginia refused to yield to this "influence" completely, and in 1732 they imposed a new duty of five per cent., which was probably somewhat lower than the former rate of £5. Another concession was also made by requiring

¹ *Calendar of Virginia State Papers*, i, 206.

² *Virginia Historical Register*, 1850. ³ *Sainsbury MSS.*, Package ii, 117.

henceforth that the duty should be paid by the purchaser instead of the importer, as had been customary.¹ This effectually disposed of the primary objections of the African Company, and no further solicitude on behalf of the "Poore planter" was manifested by the Privy Council.

This rate of five per cent. remained in force until 1740, when it was doubled, to provide funds for aiding the Crown in the prosecution of the Spanish war. After four years it was reduced once more to the customary rate.² During the French and Indian war it was raised to twenty-five per cent., to be continued at that rate until 1765. But this proved to be too high, for two reasons.³ In the first place it did not produce the maximum revenue, and secondly its prohibitive effect was not adapted to the later developments of the colony's resources. There had come to be a large demand for slaves, and many Virginians had become interested in the traffic after it had been opened to all British subjects by a law of the 23rd George III. The act which removed the extra duty in 1760 recited that it "hath been found very burthensome to the fair purchaser, a great disadvantage to the settlement and improvement of the lands in this colony, introductive of many frauds, and not to answer the end thereby intended, inasmuch as the same prevents the importation of slaves, and thereby lessens the fund arising from the duties upon slaves." Henceforth the rate continued at five per cent. until 1766, when the revenue was found inadequate to balance the budget, and an additional ten per cent. was added for seven years. Three years later still, another rate of ten per cent. was added, making a total of twenty-five per cent.⁴ These various duties were in force until the Revolution, but we may believe that

¹ Hening iv, 318.

² Hening v, 92; vi, 218.

³ Hening vi, 419, 465; vii, 81, 281, 363, 386.

⁴ Hening viii, 190, 237, 337, 344.

after 1770, with the growth of the spirit of independence and the political theories which led to it, the institution of slavery became more and more unpopular.¹ If this view be accepted, the later impositions of the duty may be regarded as prohibitions or discouragements of the slave traffic. These culminated in 1778, in an act prohibiting all further imports under penalties of £100 for each offense.² Thus ended all direct participation of the Commonwealth in the profits of this nefarious traffic; for the Constitution of the United States soon effectually prevented its revival by forbidding all importation of slaves after 1809. That this prohibition was loyally enforced is shown by various acts which were passed from time to time to secure this result.³

The Export Tax upon Hides.—Besides the import duties upon slaves and liquors, the export tax upon tobacco, and the tonnage and port duties, which we have noticed, there were no regular indirect taxes levied in Virginia. There were a few other sporadic attempts to tax foreign trade; but they were either for prohibitive purposes, as in 1660, when five shillings a barrel was imposed upon all meats exported;⁴ or they were part of a protective policy for the encouragement of certain industries. The prohibition of all exports of hides was customary from the earliest days of the colony,⁵ in order that the country should be supplied with leather at reasonable prices. But in 1691, the college became the object of much solicitude, and various acts were passed to provide a revenue for it. It was conceived that these two objects might be combined, thereby encouraging learning, and at the same time restricting the export of hides and skins. An

¹ South Carolina forbade all further importations of slaves in 1760, as the number were becoming too great; but the Governor was reprimanded for assenting to it, and the act was disallowed.

² Hening ix, 471.

³ *Statutes*, 1809, 61, 6.

⁴ Hening ii, 21.

⁵ Hening i, 174, 488; ii, 179, 185, 216.

export duty was therefore laid at the rate of one shilling per raw hide, two shillings for each tanned hide, buckskins eight pence, doeskins five pence, each pound of wool six pence, and of iron one penny. The proceeds of these duties were then to be devoted to the uses of William and Mary College.¹

This duty was found to be too high, and was reduced to three pence per raw hide, and six pence per side of leather, while fox, mink, raccoon, and other skins were taxed from three farthings to a penny each.² These rates were continued from time to time; and they were often increased for special purposes, as in 1755 for rebuilding warehouses destroyed by fire;³ but were of little importance. In 1744 they were greatly increased, (to 2 sh. 6 d. and 5 sh. for raw and tanned hides respectively) being thought to be "disproportionate to the real value of hides. The Burgesses soon discovered, however, that this was a virtual prohibition; and the old rates were reinstated. It was found that "6 d. on a raw hide, increases the college revenue, (and) is easily borne by the commodity." The principal export consisted of the raw hides, so that now the rates were made equal upon both raw and tanned hides, and shortly afterward all other skins were taxed at a uniform rate of two pence a dozen.⁴ It will be remembered that the Assembly had also imposed an extra duty of one penny a pound on tobacco exported during most of the eighteenth century. Yet the revenue from both these sources together was not very considerable; and was devoted exclusively to the support of the college. Its importance in this connection lies in the fact that these duties upon hides were the only customs duties which were imposed at any time, except those which we have mentioned previously. There

¹ Hening iii, 63.

² *Ibid.*, 123.

³ Hening vi, 487; v, 37.

⁴ Hening v, 437; vi, 91.

was no power to tax imports; it was contrary to the colonial policy of Great Britain; and we have seen that whenever the Assembly tried, as in 1711, to impose a general import duty, it was disallowed by the Governor. There was no resource for indirect taxes except the duties upon exports, and Virginia exported nothing but tobacco to any considerable amount.

Tonnage Duties. An act of 1631 ordered that "every vessel or shipp comminge out of the ocean (which) shall—until further order be taken in, shall pay after the rate—of gun powder and ten iron shott for every hundred tunns, and so to be accounted proportionably bigger or lesser."¹ This law was imposed in order to provide ammunition for the fort at Point Comfort. Soon after this, the rate of contribution was fixed at one hundred pounds of powder and ten shot for every hundred tons. Then it was changed again to a quarter pound of powder for each ton, as the vessels were all less than a hundred tons burden. In 1639, this fee was established at a proportionable amount of "match and paper Roial," but three years later the old proportion of powder and shot was enacted in addition. It was soon increased to a half pound of powder and three pounds of shot, or in money three pence a ton instead.²

This became the customary rate, and it was continued from time to time. Still it was merely incidental to the other customs regulations, and was rather an inspection and entry fee than a tax. Vessels were obliged to pay it at each voyage, whether they were laden or not. But as late as 1671, it is reported that only eighty ships a year traded with Virginia, so that the revenue could not have been of any value. It was generally included under the head of import duties.³ A slight addition was made to this fee during

¹ Hening i, 176.

² Hening i, 218, 247; ii, 446.

³ Blair and Chilton; *Spotswood Letters*, May 17th, 1717; *Dinwiddie Letters*, October 25th, 1754.

the administration of Governor Culpepper. He secured a grant from the Assembly of the right to demand a port duty from incoming vessels, in return for his indemnity to the participants in Bacon's Rebellion.¹ This was merely a continuation of an old custom in accordance with which masters of ships had made presents of wine, fruits and provisions to the chief executive. It soon died out, however, and although Sir William Keith declared that the port duty produced £500 in 1738,² no further mention of it occurs in the colonial records. It probably fell into disuse with the growing opposition to the exactions of the Royal officials. Not unlike the right of prisage in Great Britain it did not survive the semi-feudal relations which gave it birth.

¹ Burk ii, 225.

² Burk ii, Appendix, xxii.

CHAPTER IV.

LOCAL TAXES.

The Powers, Functions and Fiscal Importance of Local Bodies. New England is the classical home of local self-government in America, while in the southern colonies no towns existed at all until the close of the colonial period. The directions in which administrative power and control were exerted were diametrically opposite. In Massachusetts the colony was but an aggregation of largely independent local units; in the South the whole colony was the unit, of which the local bodies were subsidiary parts. Here there was no nucleus about which local governmental powers could be collected, and everything conspired to restrict the growth of any local autonomy. Each plantation, like the ancient household, was isolated, independent and completely self-sufficient. The General Assembly was the sole representative of sovereignty, and such local bodies as existed were mere agents to execute its will. The only local institutions were the county courts and the parish vestries, and they were but creatures of the central government. This body granted or removed powers with no limitation in theory or practice. It was an extreme example of the American system of specific delegation and limitation of the powers of local units, and was marked by constant interference of the central government in the affairs of local communities.

This relation existing between the general and the local governments is reflected in the fiscal history of the Commonwealth. The local units were almost as old as the

colony, but their functions were so limited that the local taxes, with the exception of the church tithes, were unimportant. As early as 1623 provision was made for a fund for local expenses, as we have seen, by requiring a yearly deposit of commodities in a parish granary, to be disposed by the majority of the freemen.¹ It was a fair beginning but the development which ensued was very slow. The county courts entailed but little expense, since the justices were forbidden to levy taxes for their support during the sitting of that body,² and their service at other times was gratuitous. For many years there were no county buildings, the court sitting in the open air, beneath a spreading tree by the four corners, if perchance good fortune had bestowed any roads upon the neighborhood. As a rule few of these existed, the waterways being numerous and more convenient. A few bridges were needed, but ferries were generally preferred in the tide-water region. Even these were no charge upon the tax payers, for the privilege of carrying passengers for a fee fixed by the legislature was gladly assumed by private individuals. There was no public education, the only institution of learning, William and Mary college, being supported by indirect taxes laid by the Assembly. About the only expenses were those incurred for the erection of tobacco warehouses, the maintenance of a few bridges, and the care of the poor. And the Assembly often assumed the cost of the first of these,³ while the care of the poor was delegated to the parish vestry.

For many years however, there was a peculiar charge imposed upon the localities, for the payment of bounties authorized by the assembly for the "encouragement of manufactures." The inauguration of this policy occurred in 1661, with the vigorous administration succeeding the Restoration ;

¹ Hening i, 128.

² Hening ii, 315.

³ *Journal*, May 31st, 1740; Hening, iv, 208; vi, 477.

it provided for bounties on wool and flax, to be paid by the Assembly from the general levy.¹ Before long this charge was shifted upon the county courts entirely, each being liable for the bounties in its own district. The advent of Governor Nicholson brought a repeal of these provisions in 1684, on account of the "charge and inconvenience."² But they were revived seven years later, and remained in force for some time. They must have been considerable at times, for the bounties were as high as 800, 600, and 400 lbs. of flax respectively for the three grades of linen made; and some counties produced as much as 40,000 yards of cloth in a year.³ Moreover they were particularly onerous, as the people seldom turned to this industry, except when there was a depression in the tobacco trade. At such times the community was always distressed; but fortunately, tobacco was usually cheap and plentiful, when there was no foreign demand for it, so these levies were generally collectible. During the first half of the eighteenth century the colonial policy of Great Britain effectually prevented any extension of this system. It was revived in 1759,⁴ but the government had become so centralized that all of the expenses were borne by the Assembly. A similar charge upon the county courts was the payment of bounties for wolves, crows and the like, but they were so small as to be of no fiscal importance.⁵ The only local expenditure which was large enough to occasion complaint was that occasioned by the erection of county buildings. The notice of such an event usually caused so general an exodus of slaves and tithables into the adjoining counties that special legislation was required to prevent it.⁶

The local expenditures were invariably met by means of

¹ Hening i. 469.

² *Ibid.*, ii, 120, 236, 287, 493, 503; iii, 16.

³ *Spotswood Letters*, March 20th, 1710.

⁴ Hening vii, 288.

⁵ *Ibid.*, ii, 236; v, 80.

⁶ *Ibid.*, v, 35.

a poll tax levied upon the male inhabitants of the county. They were usually rated by the justices of the county courts, although this seems to have been productive of abuses, especially in the payment of bounties. In 1676, for instance, it is asserted that the local levy amounted to forty pounds of tobacco per poll,¹ while the average of the eighteenth century was only about four pounds.² The Reform Assembly which met in June of that year dealt with this matter by ordering that henceforth a number of the "discreetest and ablest" freeholders of the county equal to the number of justices, should join with them in assessing the levy, since "it hath been suspected that sums have been raised in divers counties for the interest of particular persons, to the prejudice of the said counties."³ This was too cumbersome, and the power to levy taxes was conferred once more upon the justices alone, or upon the court-martial if the district were unorganized.⁴ As these bodies had been previously prohibited from levying any taxes for their own "accommodation," and as the bounty system was abolished after a time, the old abuses did not recur.

The assessment of these taxes was made upon the basis of the lists of tithables made out by the Assembly. In the collection of the general levy, any surplus above the allotted quota went to the county, while the local taxes were held by the sheriff for the use of the Assembly if there had been an over-estimate in the allotment of that county. Thus it appears that while the sheriff was held liable for the amount of the general and local levies in his district, so also the county, as a fiscal entity, was responsible for the payment of its apportioned quota of the general levy, even at the expense of its local taxes.⁵ In all respects this general levy

¹ "*Virginia's Deflowered Condition*" reprinted in the Massachusetts Historical Society Collections.

² Hening iv, 370. ³ *Ibid.*, ii, 357. ⁴ *Ibid.*, v, 175, 188. ⁵ *Ibid.*, iv, 370.

assessed by the Assembly, took precedence over the revenues needed for local expenses. In 1742, the county courts, were empowered to contract debts for permanent improvements but they were held to a strict accountability.¹ A constant tendency was manifested by the legislature to encroach upon the sphere of local self-government. Many functions, at first purely local, were absorbed by it, and with this tendency the fiscal powers of localities were curtailed. The control of the inspection of tobacco, the cost of erecting warehouses, the regulation of the rents and salaries which should be paid, as well as all damages incurred by flood or fire, were assumed by the legislature. The wages of the Burgesses, at first paid by the county courts, were transferred to the Assembly. And this movement went on until by the close of the eighteenth century the rural communities were stripped of most of their functions, except the building of bridges.²

The rise of towns and municipalities did not occur until after 1750, and the legislature at once manifested a jealous disposition to limit their activities. Such few powers as were granted were for specific purposes and a limited time. The city of Williamsburg, in 1744, needing a prison, was permitted to impose a poll tax "for the time being;" but not till 1762 did it receive authority to levy taxes to keep its streets in repair.³ Two years later this plenitude of powers was deemed liable to "prove of dangerous consequence to the liberties and properties of the said citizens."⁴ Consequently, all of its fiscal powers were reënumarated and specifically limited. Even the power to contract loans, which the counties enjoyed, was expressly withheld. The result was that as late as 1799 the town taxes were only

¹ Hening v, 175.

² La Rochefoucauld's *Travels*.

³ Hening v, 263.

⁴ *Ibid.*, vii, 469.

about fifty cents per poll, and the only expenditures were for the care of the poor.¹ Until 1763 Norfolk Borough was not empowered to assess taxes for a night watch, a ferry, or street lamps; and in 1772 it was obliged to petition for authority to raise money for building a powder magazine.²

The first instance of a grant of any considerable power of taxation occurs in 1782, when the city of Richmond was incorporated;³ and yet, nearly twenty years later, the municipal charges and the revenue were very small. The poor rate was the main tax, being levied upon carriages, the renting of houses and free negroes.⁴ But this belongs to the history of a later time. We may conclude that during the colonial period the fiscal importance of local bodies was very slight. The few powers exercised by the early towns in the days of the Virginia Company were dissipated with the development of the counties which supplanted them as local units. And these rural communities were too scattered and indefinite to exercise any considerable functions of government. Towns were growing, to be sure, but their activities were not developed until a later date.

The Church Tithes. A local tax of a peculiar character was found in Virginia in addition to the county levy. This was known as the minister's tithe, and was imposed to provide for the support of the established church. At first there had been no distinction between the parish and the county;⁵ but by degrees the parish became differentiated from the larger body, and the tithes developed into a special and peculiar charge upon all who lived within its limits. It was a local tax from which there were no exemptions; and was so universal in its application that it was regulated by the

¹ La Rochefoucauld's *Travels*. ² Hening vii, 152, 611, 652. ³ *Ibid.*, xi, 47.

⁴ La Rochefoucauld's *Travels*.

⁵ *Virginia Local Institutions*, Johns Hopkins University Series, ii.

assembly, and not by the parish vestry.¹ All other local rates were fixed by the county courts, but in this case the vestries merely collected the tithe assessed by the assembly for the minister. They were, however, permitted to levy an additional amount for the other parish expenses. Thus the tithe was essentially a local tax, since the proceeds of it were always expended in the particular district in which they were collected.

The earliest expedient for providing for the support of the clergy was similar to that adopted by the Virginia Company for the compensation of its regular officials. One hundred acres were set apart in each parish as a glebe, and six tenants were settled upon it who should provide for its proper cultivation. On the downfall of the Company the tithe was substituted for the tenants, although the glebe lands were still set apart as a private domain.² No planter was permitted to sell his tobacco until his tithes had been paid, for the collection of which one man was chosen in each hundred. In 1629 a curious act was passed to continue this tax, enacting "that all those that worke in the ground of what qualitie or condition soever shall pay tithes to the minister"³ And these contributions were to be taken from the "first and best" tobacco and corn in every case. Being intended to quicken the moral sense of the community, they were often combined so as to act as sumptuary laws. One of the first of these enacted "against excesse in apparell, that every man be cessed in the church for all publike contributions; if be he unmarried, according to his owne apparell; if he be married according to his owne and his wives or either of their apparell."⁴

¹ Neill, *Virginia Carolorum*, 168.

² *Virginia Historical Collections*, i, 11, 45; Stith, 319.

³ Henning i, 124, 144, 242.

⁴ *Journal*, August 2nd, 1619.

At first the yearly allowance for each minister was regulated according to the price of tobacco for each particular year, so that its real value might be kept as nearly constant as possible. In 1631 the tithe, therefore, was equal to the average value of a bushel of corn and ten pounds of tobacco, together with the twentieth calf, kid or pig. Fifty years later this was commuted into sixteen pounds of tobacco in lieu of other provisions. The average allowance for each minister was supposed to be equal to £80 a year, although in good times it was sometimes as much as £100.¹ The fluctuations in the price of tobacco could never be predicted, and a movement was set on foot toward the close of the 17th century to define these salaries more exactly. In 1696, they were fixed at 16,000 pounds of tobacco (net), beside the use of a glebe of 200 acres and a "mansion house." Five per cent. was allowed for collection, but this proved to be so inadequate that it was increased to ten per cent. in 1727. Moreover, the tobacco was to be delivered at a convenient landing on some navigable stream.²

The ancient custom of varying the amount of the tobacco according to its price was thus abolished. By the new system the minister was supposed to be compensated for his losses in bad years by the surplus which accrued to him in prosperous seasons. This was oftentimes no small hardship to the clergy, and their salaries are said to have been reduced during peculiarly hard years as low as £25 in money. Governor Spotswood tried to reform the system by levying forty pounds of tobacco on each tithable, and converting the proceeds into cash, from which £80 in money should be paid to each minister, but the project was condemned by the Burgesses.³ And this allowance of 16,000 lbs. of tobacco re-

¹ Hening i, 159, 220, 226; Foote's *Sketches*; Perry's *Historical Collections*; Force's *Tracts*, ii.

² *Ibid.*; Hening iv, 205.

³ *Spotswood Letters*, November 11th, 1711.

mained constant during the colonial period, until a change in public sentiment toward the English Church led to its disestablishment during the Revolutionary period.

The first manifestation of this opposition, which was due to the character of the population which settled the Western District, and later to the strained relations with the mother country, occurred in 1755. The crop of tobacco for that year was especially poor, and the price was proportionally enhanced. This made the tithes especially obnoxious, and the Burgesses bethought themselves of easing the burden a bit by permitting a payment of it in money at two pence a pound. Since the price of tobacco was considerably above this figure, the result of this act was to curtail the salaries of all the clergy. It was, however, wisely limited to ten months, a period too short to enable the Crown to disallow it, and yet long enough to bridge over the season of scarcity. So far as the clergy were concerned, this law was undoubtedly unjust and dishonest, and as such has been severely condemned by all historians. And yet in all other respects it was a salutary provision against the extortions which were often practised by avaricious sheriffs upon those who for any reason could not obtain tobacco with which to pay their debts, and who were obliged to commute them into money.

The clergy submitted to this obvious injustice; but when the Burgesses tried to reenact it three years later, they proceeded to contest it in the courts.¹ The regular allowance for the year would have been £400, which was reduced to £133 by the operation of this second law. The case has been immortalized as the "Parson's Cause" in the history of the struggle for American Independence. But we shall in this place merely refer to it, leaving its dramatic features to the writers on political history. Suffice it to say that the

¹*Life of Patrick Henry*, by W. W. Henry, as well as M. C. Tyler.

act was disallowed by the Crown, although the courts all refused to award any damages, probably because of the growing antagonism toward Great Britain. The tithes were temporarily suspended from year to year after 1776, although the vestries were all permitted to levy a poor rate.¹ In 1779 the whole system was abolished. With the formal disestablishment of the church, the glebe lands were confiscated, and the complete separation of church and state was accomplished. Henceforth the local taxes were purely political or administrative in character, and the ecclesiastical parish disappeared as a governmental agent.

¹ Hening ix, 312, 579; x, 197.

CHAPTER V.

THE BUDGET.

The budget is an institution which is peculiar to a developed state where definite governmental policies are devised, maintained or modified to suit the ends for which the state exists. It implies the establishment of a stable government, with an organic administrative machinery, a certain regularity in public expenditures, and the authority to enforce contributions to meet such demands. In the days of martial law, or of purely speculative venture, which prevailed for some time in Virginia, there was no such regularity in either revenues or expenditure. And even when the public body began to take form, it is impossible to distinguish the private from the public functions of the nascent state. No budget existed, therefore, for many years. When it finally developed it was formed through a combination of the various parts, each of which we have already studied in detail. We have seen what was the nature of the revenue, and the expenses of the government; what external factors determined or limited their practical application; and in how far the popular representatives utilized the possibilities of them. The next step is to gather these various parts together, and to discover what influence they exerted upon each other. First, however, it will be necessary to consider the political or constitutional questions which arose in regard to the relations of the Crown to the Colony in fiscal affairs; and then the results of the preceding studies will be grouped under a single head, that we may see what finally determined the fiscal policy of the Commonwealth.

The Constitutional Separation of Powers. Various provisions in the early charter of the Virginia Company granted to the colonists exemption from all taxation, with the exception of certain duties upon imports; but these were all abrogated with the withdrawal of its charter in 1625. At this time all of the powers granted to this corporation reverted to the Crown, and of course this immunity from taxation was removed at the same time. Had James the First lived until Virginia became more than a mere speck upon the map of America, it is impossible to say what might have been the result. It chanced, however, that other affairs occupied the minds of Englishmen, until the colony had quietly grown to such a size that it was able to assert its rights. Charles I was a broader-minded sovereign in many respects than his father, and he seems to have recognized the position which the Assembly assumed as the basis for its future constitution.

The Assembly met regularly with the sanction of the King, during the period from 1625 to 1639, at which latter date its legal powers were defined for the first time. Then it was that the Burgesses asserted the exclusive right of legislation in all matters of taxation.¹ Governor Harvey had arbitrarily increased his perquisites of office by the imposition of heavy fines and amercements, and had claimed absolute supremacy in all legislative affairs. It became highly important, therefore, for the Assembly to curb the executive authority by a distinct assertion of rights. To be sure much of this tyranny on the Governor's part was probably due to the failure to make due provision for his support after the dissolution of the Company. But in 1639 the Burgesses remedied this evil, receiving the assent of the executive to their novel assumption of power in return for this grant of revenue. The King was too deeply involved in his own affairs to take note of this, even if he had deemed it of suffi-

¹ Hening i, 171.

cient importance to do so. In this manner the Burgesses established a precedent, which served as a basis for their claims, until Governor Berkeley's charter granted them the right of government "according to the laws of England." Thus the right of absolute control in all matters of taxation was firmly fixed in the colonial legislature. The future disputes and struggles with the executive were mainly attempts to re-assert powers which had inadvertently fallen into disuse through careless or indefinite legislation.

For many years all public contributions were made in kind; they were paid directly to the person for whose use they were intended and each want was satisfied as it arose. Generally there was no treasury balance of any kind; in fact there was no place in which it could have been deposited—no officer who was empowered to care for it. In a few instances, when disbursements were delayed unexpectedly, the collected tobacco was left in the care of the Commissioners of the County Courts;¹ but usually no provision for the future was made. This was in part a result of the simple system of the time. It was also due to another principle firmly fixed in the policy of the Assembly, which was that no independent or permanent source of supplies should ever be allowed to the executive. The Burgesses had gained control of the purse; but the power of appointment was still vested in the Crown. And their precious privilege was of no avail unless with it was coupled a certain coercive power over the representative of the King.

When Governor Berkeley first came to the colony, bringing the welcome charter of 1639, the burgesses, as a mark of gratitude, granted him a yearly poll tax of four pounds of tobacco² during his term of office. This was a dangerous precedent, as they soon realized, and when the overthrow of the Stuarts ended the Governor's authority, they hastened to

¹ Hening i, 286.

² Burk ii, 65.

make a new contract with him. The supplies which were granted therefore in 1642 were distinctly stated to be merely temporary in their character—not to be repeated, except in case of necessity.¹ Of course the Governor had nothing else to do but accept these terms; and the assembly once more made good its claim to supremacy in fiscal affairs. An apparent exception to this established policy was a grant of power to the Governor and Council, in 1661, to raise a levy for county expenses for three years; not to exceed twenty pounds of tobacco. This liberality was tempered, however, by a saving clause which reserved power to change it if an Assembly should be convened before the expiration of that time.

The general reaction in favor of the royal prerogative after the Restoration did not affect the supremacy of the Assembly in matters of finance. The Governor now attempted to strengthen his power by means of an alliance with the Council, which in 1631 had been active in its resistance to his authority.² Since that time this advisory body had become closely allied with him in material as well as political interests. The Councillors for instance were first exempted from taxation by the charter of 1639, which Governor Berkeley had brought with him; the patronage of the colony had become very extensive, being largely at the disposition of the Gov-

¹ "This Grand Assembly, having alsoe entered into a deep sense and consideration of the duty and trust which the publique votes and suffrages have cast upon them, under which is comprehended as the most speciall and binding obligation, the preservation of the rights and properties of the people, to which this course may seem to threaten violence; yet as well for the silencing of pretences as for answering of arguments of weight, it is thought fit hereby to declare that as from the infancy of the collony, there was never the like concurrence and pressure of affairs, so they have recorded to their posteritie with this ensuing president of accommodation for the Governor, that the aforesaid instance and motives removed, they will never yield or consent to receive (renew) the same.—*Hening* i, 280.

² Burk ii, 28; Blair and Chilton.

error; and this power was used to create a compact body of devoted adherents who upheld the executive against the legislature. The council was not affected by tax laws, and had no motive for opposing any schemes for increasing the Governor's prerogative. Yet too much importance must not be ascribed to the influence of this body; nor to the mere fact that its members were not liable to taxation.¹ For the financial system then in vogue made a mere personal exemption from levies of little value so long as the poll tax was still imposed upon the slaves and family servants. Nevertheless the position of these officials was a highly favored one in many ways, since they held nearly all of the offices of honor or profit in the colony. They were of no slight importance therefore as allies of the Governor in settling the final balance of power.

After his reappointment in 1661, Governor Berkeley bethought himself of making use of this body, which had now become fully dependent upon his favor. The Assembly had allowed the Council to hold an advisory power in the consideration in committee of matters of fiscal importance. And the Governor preferred the modest yet insidious request in 1667, that the Burgesses should allow two of these Councillors to join with them in granting or confirming the public levies,²—which was indeed to induce a crafty confusion of the customary functions of the legislature and the executive. This was instantly perceived by the Assembly, which humbly answered, "That they conceive it their privilege to lay the levy in the house; and they will admit nothing in reference from the honorable governor and council, unless it be before adjudged and confirmed by act or order, and after

¹ This immunity from taxation was regarded even by the Reform Assembly of 1676, as a compensation for their services. It does not seem to have been strenuously opposed by the Burgesses.—*Hening* ii, 359.

² *Burk* ii, 145.

passing in the house, shall be presented to their honors for their approbation or consent." But one course was open to the Governor, so he returned answer that "This is willingly assented to and desired to remain on record for a rule to walk by for the future which will be satisfactory to all." Thus did Governor Berkeley learn his lesson in the science of finance.

The next incident in the history of the balance of power, occurred when Governor Culpepper returned to Virginia in 1679, bringing complete indemnity for all the offences committed during the late rebellion. The Burgesses were so overcome by this generosity that when they granted the usual duties for the Governor's support, they made them perpetual, and subject to none save His Majesty's sole direction and control.¹ They moreover changed the customary presents of wine and dainties made by the masters of incoming ships to the Governor into a regular due, which was rigorously exacted for some time. This seemed so auspicious that Lord Culpepper's successor tried to force matters a little further. He was instructed by the Board of Trade and Plantations, in 1680,² to obtain a revival of that former grant of power to levy a small tax independently of the Assembly, which Governor Berkeley had previously enjoyed. This the Governor attempted to do in 1683, in vain; for the Assembly proved to be "peevishly refractory to the least proposition,"³ answering that they could "in no waies concede to it." Disappointed in this direction, he endeavored to increase the perquisites of his office by imposing a tax of twenty shillings a year upon schoolmasters, £5 upon lawyers in the general court, and fifty shillings on those practising in the county courts, together with a tax of two hundred pounds of tobacco upon the probate of wills.⁴ These last were, however,

¹ Burk ii, 22.

² *McDonald MSS.*, December 3d, 1680.

³ *Ibid.*, vii, 223.

⁴ *Beverley*; and Burk ii, 301, 308.

promptly removed during the next year through the earnest representations of Col. Thomas Ludwell, the agent of the Assembly in England.

The Revolution of 1688 exerted little influence upon the relations of the various parties in Virginia. The policy of the Governors seems to have been to prevent agitation by promptly proroguing the Assemblies whenever they showed a disposition to be refractory. As for their own personal support, we may believe that the unlucky step of granting them a regular duty upon tobacco exported removed the partial dependence which had formerly existed. The exclusive right of the Assembly to lay taxes was not contested, but so long as no extraordinary supplies were needed the Governors could afford to wait.¹ The effect of this policy was that no supplies were granted, and a gradual accumulation of indebtedness ensued. In 1712 Governor Spotswood reported that the revenue had been defective for twenty-two years, and that £7000 had been taken from the king's private estate.² All this naturally favored the popular party, which held the grip upon the purse-strings. At last the Governor was obliged to abandon the customary policy of coercion, and conciliation was adopted instead. The Assembly was "such a Whimsical Multitude, that it requires a great deal of Management to gain their consent to anything that's new, especially where money is required."³

This attitude was a sore trial to Governor Spotswood, for he was a progressive man. He wanted to reform the system of tithes, to reorganize the quit-rents, and to increase the revenue from the export duties. But the Burgesses not only asserted their authority; they became aggressive at last, and demanded that these quit-rents should no longer be drawn

¹ In 1695 Governor Andros tried to obtain a grant of £500 to aid New York but was refused.—*Sainsbury MSS.*, iv, 231.

² *Letters, Introduction.*

³ *Ibid.*, November 11th, 1711.

away to England but should be devoted to reducing the burden of taxation. As we have seen, this right was denied by the Crown, but the matter was compromised by donations from time to time at the request of the Assembly. Years of plenty and prosperity succeeded and the treasury was abundantly supplied by the customary methods, so that all discussions upon the subject of authority were silenced for a time. Yet prosperity did not tempt the Assembly into a repetition of its former indiscretions in dealing with the executive. Sir William Keith truly described their policy a half century later when he affirmed that "the public there is generally in debt, because they are extremely jealous of attempts upon their liberties, and apprehensive that if at any time the public treasury was rich, it might prove too great a temptation for an artful governor."¹

The Burgesses by carefully adhering to this policy apparently regained all of their rights which had been curtailed during the closing decades of the seventeenth century. The Governors tried to cajole, to higggle or to threaten whenever extra supplies were needed, but the legislatures could not be moved. At last they became so exceedingly independent that they compelled a strong executive like Governor Dinwiddie to assent to an act "clogg'd with unreasonable regulat's and Encroachm'ts on the Prerogative."² The necessity of extraordinary taxes for the prosecution of the war with the French still further emboldened the popular representatives, until the Governor in despair wrote to the Council in England that "there appears to me an Infatuation in all the Assemblies in this part of the world."

One final struggle was made by Governor Dinwiddie to secure an independent revenue of his own. He attempted

¹ *A short discourse on the present state of the colonies in America with respect to Great Britain.*

² *Letters*, November 12th, 1754.

to revive the fee of a pistole for the use of the Royal seal which was necessary to the validity of every land patent. A similar exaction had been made by Lord Howard in 1685; but it was declared "uneasy and burdensome" to the people, and was finally discontinued by the King's orders.¹ At this attempt of the Governor's, the Assembly at once became "so violently warm thereon" that he was obliged to prorogue them. The Burgesses petitioned the King, and the matter was discussed for over a year. Finally the Council decided to reject their address; even Horace Walpole seems to have upheld the Governor's conduct in the matter. It was deemed best, however, not to be too exacting, and the fee was discontinued, although the right to impose it was still claimed.²

From this time the active opposition to the representatives of the Crown became more and more pronounced. And the Governor dared not be too aggressive, apparently having a premonition of the result. The people opposing the embargo in 1757, Governor Dinwiddie wrote to the Lords of Trade that he "thought it more eligible to take [it] off than to admit of any Dispute of Y'r Power in ordering it." Despite this warning, the fatal policy of adopting more stringent measures was pursued. Lord Dunmore was even forbidden to assent to any revenue bills which were not permanent, unless they were intended to defray temporary expenses.³ This arbitrary conduct was met by an equal determination on the part of the people not to yield. The crisis was thus hastened by the conduct of both parties, until the final separation ensued in 1776 when the Burgesses became the sole representatives of sovereignty in the colony.

Development and Analysis of the Budget. It has appeared

¹ *Letters of Governor Dinwiddie*, November 28th, 1753; March 24th, April 26th, May 10th, July 24th, and October 25th, 1754; *Journal*, November 28th, 1753.

² *Winnowings in American History, Virginia Tracts*, § 1, by W. C. Ford.

³ *Massachusetts Historical Society Collections*, x, 635.

from the previous study of Virginian institutions that the earliest expenses of the incipient state were those required for the support of the various officials who were appointed by the Company or the King. Yet after the reversion of the domains which had at first been set apart for this purpose, no particular provision was made for these salaries, which were apparently paid from the Royal Exchequer. For many years therefore the principal expenditures which were demanded directly of the Assembly were for the defence of the colony from the Indians. In 1629, nearly the whole appropriation of 8,000 lbs. of tobacco was made for the purchase of ordnance, powder, shot and military supplies. Three years later, 20,000 pounds was expended for the same purpose; while the supplementary charges of pensions and damages were very considerable. Forts had to be constructed and a militia maintained at the public expense.¹

With the growing extent of the colony these items naturally became secondary in the regular peace budget, and the salaries' account once more became prominent. Whereas the sole charge in 1639 had been £1,000 for the Governor's support, with the expansion of the sphere of government this increased until the fixed salaries alone absorbed £3,000 in 1700. By the middle of the next century it became necessary to raise over £4,000 yearly for these items alone. The salary of the chief executive had been doubled during Governor Culpepper's term; and the Council which at first had served without compensation was allowed £350, together with a salary of £500 for the Lord President. The perquisites of this body moreover amounted to upwards of £400.² As for the expenses of administering justice, those services

¹ Hening i, 128, 143, 196.

² *Ibid.*, i, 423; Burk ii, Appendix, iv; Oldmixon; *Dinwiddie Letters*, October 25th, 1754.

which were not gratuitous were performed by the regular officials for the payment of a certain fee in tobacco.¹

In order to meet all of these increased expenses, the revenues of the colony had to be constantly augmented. At first a simple levy by the poll had sufficed. Then it became necessary to provide for a permanent revenue to meet the fixed charges, for which purpose the export tax upon tobacco was instituted. This, however, was not available for the other general expenses of government. The assembly had no control over it, since all accounts were made to the King's agent alone. At one time the proceeds of it were not even deposited in Virginia, but were transported to England, the payment of the salaries being strictly limited to the Crown officials.² The fund was therefore as completely removed from the control of the Assembly as if it had never existed, and the poll tax was still their sole support. And this was not a permanent source of income; it was generally appropriated by the same act which authorized its levy; and no surplus remained for contingent expenses. To meet this need of a definite permanent income, the liquor duties were imposed in 1682 and the tax upon imported slaves was soon added. These taxes were to constitute a fund which should be exclusively subject to the control of the Assembly. Unfortunately, however, they proved to be exceedingly inelastic, and too dependent upon the general social and political conditions of the colony. Yet in ordinary times they served well enough, and once or twice even yielded a surplus. With their establishment it became necessary to have an officer to care for the moneys which they produced, so that in 1695 a Treasurer was appointed who was made accountable to the Burgesses alone. He was independent of the

¹ Hening i, 176, 201, 266, 463; ii, 244.

² *McDonald MSS.*, October 10th, 1676; viii, 238; *Sainsbury MSS.*, viii, 22.

Auditor and the Receiver General, who were mere agents of the Crown in the colony.

Being possessed of a financial and administrative system of their own, the burgesses were in a condition to develop further their system of indirect taxes. The customary direct tax came to be regarded as more and more oppressive, and every effort was made to supersede it by increasing the customs duties. This proved to be only partially feasible, however. There was a limit to the revenues which could be derived from the liquor duties; the Royal African Company would not hear of any increase of the slave duty; and the British government would not allow duties upon the import of any manufactured goods. Yet the governmental expenses kept on increasing during the eighteenth century, and the assembly was forced to revert to its customary direct taxes. It was at this juncture that the struggle to obtain possession of the quit-rents occurred, with the result which we have seen. Being denied the proceeds of this land tax, there was nothing to do but to tax the polls whenever any emergency arose.

In 1661 the regular revenues were £4,200, exclusive of the quit-rents and the general levy; by 1700 they stood at £4,500.¹ For some years they did not increase, and at times were even less, being but £4,000 in 1715. Then followed the great increase in the importation of slaves, which paid off all debts and even yielded a surplus. But this was soon cut short by the Royal African Company. After this time the regular revenues developed but slowly with the natural increase of population, until in 1754 they are said to have been £6,500.² This paid the salaries and fixed charges, which were £4,345, the surplus being devoted to the con-

¹ Burk ii, Appendix, iv; Oldmixon, 298; Charles Campbell's *History of Virginia*.

² *Dinwiddie Letters*, 1755.

tingent expenses, along with the poll tax. This last tax produced about £3,000 at this time.

The revenues of the colony, therefore, were derived mainly from two sources, the poll-tax and the export duty upon tobacco. The first of these was the simplest and most natural. The second was not introduced until the latter part of the seventeenth century. It yielded a constantly increasing income, but was subject to many limitations. The direct tax on the other hand was exceedingly elastic. The sub-joined table¹ shows that it produced about one-half the

¹ ESTIMATED REVENUE FROM THE POLL TAX.

Date.	No. Tithes.	Av. Levy in lbs. of Tobacco.	Value per lb. Fixed for Quit Rents.	Total in Pounds Currency.
1632	2000	64	1640 (12d.)	.....
1644	5000	.....	.....	.....
1652	7000	.....	1645 (3d.)	.....
1654	7209	30	1661 (2d.)	1802
1671	13000	12	1676 (1.5.)	3250
		40 ± (extra)	1682 (1.2.)	.....
1697	20000	16	1d.	1333
1711	30000	5 ±	"	625
1722	38000	4	"	633
1742	63000	3	"	790
1748	82000	3	"	1025
1759	105000	1 sh. (war.)	"	5250
1772	153000	3	"	1275

ESTIMATED REVENUE FROM THE EXPORT TAX UPON TOBACCO.

Date.	Hogsheads Exported.	Rate.	Revenue in Pounds Currency.
1671	15000	@ 2 sh.	1500
1700	30000	"	3000
1740	30000	"	3000
1750-60	50-60000	"	5-6000
1770	70000	"	7000

revenue during the second half of the seventeenth century; that it declined till 1750; and then was reapplied with more vigor during the troublous times which followed. Thus the common opinion that the revenues of Virginia were mainly derived from indirect taxes is but partially true. Such taxes would have been exclusively adopted without doubt had not various external considerations prevented it in practice.

It appears that the form of the budget was in great part determined by outward circumstances and environment. This is indeed natural, for it appears to be the rule in the early history of all human institutions. Only when such bodies become fully matured, do they begin to react upon their surroundings; and then it is that definite policies begin to be outlined, conditions moulded to suit the popular will, and a complete theory of the proper end, duty and authority of the state developed, in accordance with which the details of administration are regulated. After the establishment of the political independence of the colony, when it became a complete governmental entity, the system became more complex. And then the modern budget appeared, with a treasury balance of considerable amount, with public debts and the development of public credit, with sinking funds and like devices for meeting future obligations, and with a definite policy of internal improvements. Some of these features appeared in a rudimentary form during the war of 1755. But the colony was then fresh and strong, and the Parliament of Great Britain stood at its back, lending political and pecuniary support.¹ Its real strength was not tested until the Revolution, when all of these expedients had to be employed. Necessity gave them birth, and being once used they proved so efficient that they remained hence-

¹ Hening viii, 334, 372.

forth as permanent features of the fiscal organization of the State.

Public Domain and Lotteries. During the later colonial period there seems to have been no revenue derived from the public domains. Fees were often demanded for land patents, but they were generally illegal and extortionate in amount, and were soon removed by the Assembly. And while they subsisted they constituted no part of the public income, but were absorbed by the Secretary or the Governor as perquisites of office. The only project for a public domain as a source of profit, was due to Governor Spotswood, who proposed in 1710 that the Assembly assume control of certain iron mines. This was "laid aside by the Assembly," and was never revived. During the Revolution, and for some years thereafter, the state owned a manufactory of arms. As it was largely a war-measure, it was of no profit to the state financially and has no fiscal importance. Thus it appears that the policy inaugurated by the Virginia Company of founding a definite and permanent domain for the support of its officers was never successful. It did not accord with the principles of popular government, which demand that the executive shall always be in a measure financially dependent upon the favor of the representative legislature.

One of the most striking features of the colonial finance of Virginia is the absence of lotteries as a means of raising revenue. It is strange that this should be so, for the reckless propensity for gambling among the planters during the colonial period has been noted by all writers on the history of that time. In Massachusetts, on the other hand, despite the rigidity of the moral ideas of Puritanism, the lottery was a fiscal engine regularly employed by the General Court.

The early Virginia Company was supported almost entirely at first by means of the "great standing lotteries,"

which were drawn from time to time in the West End of St. Paul's Churchyard.¹ Until 1621 these lotteries were the "real and substantial food" by which the colony was nourished.² Yet after the time when a real government was established, there is no mention of them until 1755. A lottery of £6000 was authorized at that time to help defray the expenses of the war with the French; but it was so unsuccessful that the time for drawing it had to be extended by the Assembly.³ It is improbable that any considerable revenue was obtained from this, and no others were authorized until after the Revolution, when they were employed extensively for many purposes.

One reason for the absence of this fiscal expedient may have been that there was so great a disposition among the people at large to gamble, that the Burgesses felt it to be their duty to discourage all such habits. In 1739 the Assembly prohibited all private lotteries as "productive of all manner of vice, idleness and immorality" in the community.⁴ Yet the use of them during the Revolutionary period seems to have become general. They were soon employed for the benefit of schools, hospitals and charities. After this time for over a hundred years the policy of the Burgesses in regard to them was very uncertain. Every few years they condemned them as pernicious, and then proceeded to grant one to some individual for a benevolent purpose. The history of the lottery, therefore, during the present century, gives a very interesting picture of the public morals of the people; but it belongs to an epoch entirely different from the colonial one. Previous to 1776 the history of this commonwealth is in marked contrast to that of some of the Northern colonies.

¹ Purchas's *Pilgrims* iv, 1773; Hening i, 108.

² *Extracts from the Transactions of the Virginia Company*, by Rev. E. D. Neill, 14; Washington, 1868.

³ Hening vi, 453.

⁴ *Ibid.*, viii, 358.

CHAPTER V.

HARD MONEY.

Early Systems. The current impression, even among historians, is that hard money and specie played a very subordinate role in the American colonies. A vast amount of loose writing has been bestowed on the peculiar systems of exchange which prevailed in different places. And much labor has been expended in compiling histories of paper currencies. The subject of hard money, however, is generally dismissed with the remark that it was very scarce, and that all trade was carried on by means of wampum or barter.

It is undoubtedly true that there was a great scarcity of any circulating medium in nearly all of these colonies. The records are filled with complaints of the inconveniences and abuses which followed as a consequence; and this is doubtless the main reason for the general impression which prevails. But instead of warranting a total neglect of the subject, it is rather a very urgent reason for seeking to know the few details which are attainable. In fact it is a trite saying, that "it is not the excellence, but the very defects of any system which lead men to write of it." Because hard money was so difficult to obtain and to keep in circulation, the utmost ingenuity was exercised as a matter of necessity in the attempt to solve the problem. There is, therefore, we submit, every reason to expect that the history of the struggles of legislators to grapple with the inexorable forces of specie gravitation may prove of considerable scientific interest. The very scarcity of coin and bullion served to render it all the more susceptible to the influence of hidden forces; the

effects were exaggerated by this means; and the intimate relations between money and trade were made more evident.

In Virginia there is an excellent opportunity to study the question, since the customary paper money cure-all was not applied until a late day, and then only as a matter of necessity. The wisdom and moderation of her legislators led them to adopt other expedients to cope with this universal difficulty. And the adequacy of their simple remedies to settle the question is evidenced by the immunity from paper money and depreciation which Virginia enjoyed for so many years. It will be the purpose of this sketch to gather together the few facts which are accessible; to search for the real cause of this dearth of money; to see what remedies were applied by the Assembly; and finally, to discover how far and in what way they were successful.

It is probable that many of the early immigrants, especially the indentured servants and children, who were sent out at the Company's expense, brought no money with them at all. Even those who were well provided in this respect, speedily exchanged their money for the necessary supplies which were sent over to them from England. Yet this did not occasion any inconvenience at first. The communistic system which prevailed for several years rendered the use of any currency unnecessary, so far as the colonists themselves were concerned. A circulating medium was needed, therefore, only in dealing with the British merchants, and with the Indians. With the latter class a species of wampum called "peak or Roenoke," was used for many years.¹ Moreover, the founders of the colony sent over several glass workers, and a factory for the making of glass beads was established, which lasted until the time of the Indian massacre. The evils of a depreciated currency were apparent even at that

¹ Beverley, *History of Virginia*, iii, chap. 12.

early day, for the Company's orders were that "beads being the money you trade with the natives, we would by no means have through to much vilified, or the Virginians at all permitted to see or understand the manufacture of them."¹ As to the foreign commerce, all trade was carried on through the Cape merchants, the theory being that "by this the same goinge for England with one hande, the price thereof may be upheld the better." All accounts with this common agent were kept in tobacco at fixed rates, "three shillings the beste, and the seconde sorte at 18d. the pound."² Thus there was little demand for coin in this direction.

It was the original intention of the founders of the colony to have a special currency of their own. The charter of 1606 gave full power to establish and issue coins of any denomination or weight that the Council might choose to adopt. This provision was, however, removed from the subsequent charters, and no further mention of it occurs; so that it is not likely the right was ever acquired, unless temporarily, during the Commonwealth. In fact, there is positive evidence to the contrary, since the Burgesses petitioned the Privy Council in 1631 to issue a special coin for them. They asked, moreover, that it be debased twenty-five per cent., in order that it might more readily be retained in the colony.³ We know that the right of mintage was strenuously denied in Massachusetts a few years later, and the same view of the powers of the colony in Virginia was probably held.

There was a general reaction after 1630 from the system of using tobacco as the universal medium of exchange and account, which had been so eagerly accepted at first. It had been based upon the presumption that the price of tobacco was a constant quantity. A few years' experience

¹ For a full history of this matter see Purchas's *Pilgrims* iv, 1783; *Virginia Historical Collections* i, 95, 137, 151, 158; Neill, *Virginia Company*, 236.]

² *Journal*, 1619.

³ Jefferson's *Notes*, ed. 1787, pg. 283.

proved the fallacy of this idea; the custom "bread many inconveniencies and occasioned many troubles;" and the Assembly tried to remedy the evil. In the absence of any new coin from Great Britain they could not abolish the old tobacco barter; but they could return to the English standard for their money of account. Tobacco, as we have seen, had fallen in value, and was in no wise suitable for this purpose. The Assembly, therefore, enacted that the estates of all decedents should henceforth be reckoned in English money and not in tobacco.¹ In 1633 this provision was likewise extended to all contracts, bargains, pleas and judgments.

The Mint Project. During the succeeding decade all of the various inconveniences incident upon an excessive production of tobacco made themselves keenly felt. Numberless regulations were imposed upon the culture of this staple in a vain attempt to uphold its price. Money was exceedingly scarce, and creditors often demanded extortionate rates for commuting money debts into tobacco. This became so common that an act of 1642 declared all money debts contracted in future to be non-recoverable at law. This, however, proved to be too drastic a measure, so that it was soon repealed.² But in the next few years tobacco fluctuated so enormously in price that once more the Burgesses were compelled to recognize that it was not a proper standard for accounts. It happened that at just this time the political connections with Great Britain were somewhat relaxed; in fact the colony was virtually independent during the Commonwealth period. There was no longer any question of authority; and the Assembly resolved to establish a metallic currency of its own.

The motive for the enactment of this law was the consid-

¹ Hening i, 170.

² *Ibid.*, i, 262; *ibid.*, 47.

eration, "How advantageous a quoine current would be to this colony, and the great wants and miseries which do daily happen unto us by the sole dependency upon tob'o."¹ "The only way to procure the said quoine, and prevent the further "miseries" was to raise the value of the Spanish pieces of eight to six shillings, with the smaller coin proportionably thereto. Thus the bullion which would be needed for the supply of the mint was to be attracted to the colony.

There was not much commerce between Virginia and the Spanish West Indies. The two were competitors so far as tobacco was concerned. Their productions were much the same, with the sole exception of sugar and molasses. It is probable, therefore, that this measure was directed toward the New England colonies, rather than toward the Spanish main. These Yankees had carried on an extensive trade with the colonies of Spain, despite all the regulations of Great Britain's colonial policy.² They carried fish and lumber to the South, and received sugar, molasses and rum in return. At this time they held almost a monopoly of the traffic, although New York and Pennsylvania soon became serious competitors.³ There was, however, comparatively little demand for Virginia's products in the South; and a far better market was to be found in New England. For twenty years there had been a very considerable coasting trade between the two sections.⁴ Provisions as a rule commanded a higher price in Massachusetts than in Virginia. Wheat had ranged from five to six shillings a bushel there previous to this time, whereas it could be procured in Virginia for about four shillings of the same money.⁵ Beef was also somewhat cheaper in the Southern colony, being two

¹ Hening i, 308.

² *Ibid.*, ii, 516.

³ *New York Colonial Documents*, v, pg. 686.

⁴ Weeden i, 207, and Doyle, 205.

⁵ Weeden: *A Perfect Description of Virginia*, 1648, reprinted in Force.

and one-half pence a pound, as against three pence in Massachusetts. Consequently the Yankee coasters exchanged salt-fish and the sugar and rum of the West Indies for these products of Virginia.

There had long been a considerable amount of silver coin in circulation in Massachusetts. Not only was it the result of their legitimate trading, but a good deal of bullion was also brought in by freebooters from the Spanish main.¹ And it is probable that this legislation in Virginia was an attempt to attain the same result which Massachusetts herself accomplished by the establishment of a mint in 1656. The customary rate at which the piece of eight had passed there was five shillings; and the rest of New England followed this example.² And it appears that this bid of six shillings the piece for it in Virginia was a direct premium of a shilling put upon the import of each coin. New York was of little importance as yet,³ and there was therefore no other place, except New England, where money could be procured. Virginia wanted the silver and was willing to pay an extra price to procure it.

The Assembly then resolved that "the said quoine will not continue with us unless we have a leger quoine." They therefore forbade all exchanges for tobacco in order to create a demand for small change, and made absolute forfeiture of all the goods so bought or sold the penalty for such trading. To take the place of this customary medium of exchange they resolved to import 10,000 pounds of copper at a cost of £750 sterling, to be paid for in tobacco at one and one-half pence a pound. Every pound of copper was to be coined into twenty shillings in currency, with an al-

¹ Brodhead's *History of New York*, i, 335; ii, 525.

² Weeden, 142; *The Republic of New Haven*, by C. H. Levermore.

³ *New York Historical Collections*, Second Series, ii, 333.

lowance of twelve pence per pound to cover the cost of coinage. These coins were to be of the denominations of two, three, six, and nine pence, respectively; and the whole issue was to be redeemed annually in new coin of a different design, so as to prevent all counterfeiting. This elaborate plan apparently came to naught.¹ It is interesting, however, as being the first complete project for a mint in America; it may be that it served as a model for Massachusetts in 1656, and for Maryland in 1662.

Not only was the mint project a failure; it was also found that six shillings was too high a price to offer for the Spanish piece of eight. Consequently its value was reduced once more to five shillings. Nevertheless, this lower price was extended to cover all money of whatever metal, that is to say, however debased, in the hope that some coin at least would be attracted.² This naturally put a premium on the importation of light and counterfeit pieces, so that the circulating of all false coins was finally prohibited in 1657. This expedient having failed, a new method of preventing the scarcity of money was next adopted: to wit, the prohibition of the export of all coin above the sum of forty shillings.³ And this prohibition was continued from time to time during the colonial period. Doubtless it was completely inoperative, but it came to be enacted as a matter of course, so long as the scarcity of coin existed. It is curious, however, that the colony should have first prohibited the export of money at just about the same time that the mother country removed her prohibition of the export of bullion.

Regulation of the Value of Money by Law. The coin of most general occurrence in all the colonies was the Spanish piece of eight. For this reason it may best serve as a stand-

¹ Chalmers, *History of the American Colonies*, i, 248.

² Hening i, 410.

³ *Ibid.*, 493; and ii, 125.

ard of comparison in a study of the legislation by the different colonies on the subject of silver. The rate or value fixed upon this serves as a rough indication of the relative values at which all the foreign silver coins circulated in the colonies. It may be used also as showing in some measure the relative scarcity of coin in different localities, since a high valuation presupposes a considerable demand, other things being equal.

For some reason there was an unusual scramble among the colonies for coin in the period after 1670. In 1671, Maryland attempted to raise the value of the piece of eight to six shillings, by setting an artificial premium upon it.¹ New York received it at six shillings in 1672, although this was increased to six shillings nine pence in 1676, at which it remained till the emission of paper money.² Massachusetts raised its value from five to six shillings in 1672,³ or to six shillings eight pence if it weighed an ounce.⁴ It passed in New Jersey four years later at seven shillings eight pence. And yet the customary valuation of it in Virginia was but five shillings.⁵ We shall see that attempts were made to increase its value; but these all proved fruitless. The only other colony which had so low a standard was Carolina, where it passed for five shillings until 1683, when its value was raised for the first time.⁶ Virginia, however, did not

¹ A law of 1686, and another of 1708, fixing the value of the piece of eight at 6 shillings, is mentioned by Scharf, *History of Maryland*, ii, 35. Yet Blair and Chilton declare it to have been 4 sh. 6 d. in 1697, as also Hickcox, *A History of the Bills of Credit or Paper Money issued by New York*, 10. Probably the one was currency, the other sterling, the difference being fixed at 33½ per cent. *Archives*, 1671.

² Historical Society, First Series, i, 424.

³ Felt, *An Historical Account of Massachusetts Currency*, 41-3.

⁴ Hickcox, *An Historical Account of American Coinage*, 9.

⁵ Hickcox, *A History of the Bills of Credit or Paper Money issued by New York*, 10; Oldmixon; and Blair and Chilton.

⁶ Hickcox, *op. cit.* 10; Carroll's *Historical Collections of South Carolina*, ii, 317.

vary the standard price of this coin until the next century, when a law of the sixth Anne declared that it should pass for six shillings in the colonies.¹ The New England currency passed at its nominal value, as was customary in all the colonies.² Maryland so ordered it in 1671; New York a year later; and the smaller colonies followed suit. Yet this was debased two pence in the shilling below the English coin. Thus while on a par with the other provinces so far as this native coin was concerned, Virginia was at a decided disadvantage in respect to all the Spanish money.

The inauguration of this policy of regulating the value of money by statutory enactment raised anew the question of the constitutional separation of powers among the branches of the government. The drain of coin was so serious, by reason of the premium offered by other colonies, that the Assembly in 1681 petitioned the king to enhance the value of this silver money by twenty-five per cent. Moreover, they agreed to pay the export duty upon tobacco in money if this were done.³ The Governor held obstinately to the opinion that this was an exclusive prerogative of the Crown, despite all protests raised by the Assembly; and he certainly had the authority of his official instructions.⁴ He, therefore, in 1683, proclaimed that the value of the crown, rix dollar, and the piece of eight, should be raised from five to six shillings. Yet the quit-rents, which were the Royal revenues, and the export tax upon tobacco, from which the Governor's salary was paid, were to be exempted from the provisions of the proclamation. Naturally, the people refused to obey this arbitrary measure; and this so strenuously that the proclamation was withdrawn. It is said that the government was

¹ Phillips, *Historical Sketches of American Paper Currency*, i, 31.

² Oldmixon; Blair and Chilton.

³ *Sainsbury MSS.*, ix, 106.

⁴ Burk ii, 237; *McDonald MSS.*, vi.

considerably in arrears for the payment of the soldiers;¹ and that the Governor took advantage of this little ruse to procure a quantity of light pieces of eight. These, it is averred, were bought during the period of enhanced value of the full weight coin, and were used to discharge these standing obligations. Whether this be true or not, it is impossible to ascertain. It must be confessed, however, that there was apparent justification in the existing low valuation of this silver for enhancing its price. The early revocation of this measure, due to the opposition of the people, may indeed have offered a chance for a little speculation to designing debtors. But it is our opinion that the version of the affair given by Beverley may be somewhat unjust.² It is certain that this act so harshly condemned was actually carried out some years later, to the manifest benefit of the colony. But for this time the question of authority proved of more importance, and the matter was left unsettled.

The same dispute occurred under Lord Howard, who succeeded Governor Culpepper. His instructions contained the following clause: "You shall not upon any pretence soever permit alteration in the value of coin without our approbation."³ There was much fraud at this time in the payment of the Royal revenues, and it may be that the Governor merely desired to secure a plenty of specie in circulation, so that he might enforce the payment of these in money. At all events he petitioned the Council in England in 1686 that power be conferred upon him to alter the rates

¹ Beverley, *History of Virginia*.

² Culpepper's report to the Board of Trade, September 20th, 1683, puts a different light on the matter. He writes: "I referre my selfe to the proclamation w^{ch} I issued forth at the Earnest Instance of the Councell, and to the Generall satisfaction of the country, though not to my owne; For I neither beleieve it will produce the advantage as Expected," etc. *McDonald MSS.*, vol. vi.

³ *McDonald MSS.*, October 24th, 1683, § 75.

of exchange for the various coins.¹ The matter was referred to the Royal Commissioners of Customs, who reported adversely upon it.² They declared it the wisest policy to allow money "to rise and fall according to the scarcity and plenty;"³ and they refused to agree to the proposition, even though the rates were changed in due proportion, fearing it might prove too great a temptation to fraud. As a consequence no further attempts of this nature were made, and henceforth in theory the rates at which coins should pass were fixed by the Council in England.

The only other legislation in regard to money in Virginia for thirty years consisted of acts necessary to secure payment of the quit-rents and export duties in specie.⁴ The rates at which commodities should be received in barter, where specie or tobacco could not be obtained, were fixed from time to time.⁵ This precaution was particularly necessary whenever the tobacco crop was artificially curtailed, to prevent the extortion of creditors in demanding tobacco at the lower rates of exchange, which ruled before the restrictive acts. The assembly always had a care for this; and the debtor's interests were generally well represented in the legislation of this period.

Thus far it appears that the subject of money really absorbed a considerable share of legislative attention during the seventeenth century. In fact there is reason to believe that in the tide-water region at all events, there was a considerable proportion of specie current. In the interior there was probably little. Various commodities were used instead of money, as for instance "best winter beaver, killed

¹ *McDonald MSS.*, vol. vii, August 22nd, 1686.

² *Sainsbury MSS.*, xi, 39.

³ *McDonald MSS.*, *ibid.*

⁴ Hening ii, 186, 283, 427.

⁵ In 1682 the prices of twenty-three commodities were fixed by law. These being rated in money as well as in tobacco, the inference would be that some fair amount of money was current. Hening ii, 507.

in season," which was received for quit-rents at a certain rate per pound.¹ Yet despite such substitutes for money, the need for some portable and stable medium of exchange was doubtless very great. There are always numberless transactions which can be conveniently effected in no other way. This scarcity of coin occurred in a time of peace, and when public credit was not in any way disturbed. Neither had there been any issues of paper money at this time. Of course either of these influences may contribute to produce a scarcity of money; but in the seventeenth century this dearth of coin was due to other causes, which operated constantly to limit the monetary circulation of the colony.

Causes of the Dearth of Hard Money. The first of these influences, which was peculiar to the seventeenth century, is rather personal and political, than economic in its nature. This is the fact that it was the interest of the Governors of the colony to encourage tobacco, instead of money, as a medium of exchange.² And we shall see that the introduction of the system of tobacco notes was due to the enterprise of the chief executive. This was opposed by the planters at first, as they were disposed to regard abundance of money as an evidence of prosperity. But the salaries of the Royal officials, as well as the Crown revenues, were customarily paid in bills of exchange on London. And it became in this way an object of interest to these officials, who desired to save any portion of their income through balances on their London accounts, that this rate of exchange should rule as low as possible. This result was attained most effectively by keeping up the price, as well as the amount, of the tobacco exports. Moreover, the system of tobacco payments offered a favorable chance for a little private speculation. The situation was analogous to that of

¹ *Calendar Virginia State Papers*, i, 18.

² Blair and Chilton.

the silver producers in the United States to-day, who are seeking to raise the price of a certain commodity by enlarging the demand for it, through its use as money.

This official influence we believe to have been by no means insignificant, while the Governor's prerogative was at its height. There are instances of laws passed to regulate the value of coin, and facilitate its use as money, which were vetoed apparently for no other reason.¹ The succeeding century, however, was affected to a less degree, for two reasons. The introduction of the tobacco notes in large part superseded the necessity for a metallic currency. And, secondly, the Governors were gradually relegated to a subordinate position, so far as initiation in legislation was concerned, so that their personal interests became of less importance.

The other causes of this lack of money are economic in their nature. And of these the so-called unfavorable balance of trade with England was the most influential of all. It operated upon all the colonies of America, and was due to the peculiar colonial policy of Great Britain. In this undeveloped state of international intercourse, there was no exchange of credit between the colonies and the mother country, analogous to the modern foreign investments of capital which to-day affect the rate of exchange so profoundly. The main factor in the situation was the relative value of the imports and exports, and these in the main could only be regulated through Great Britain.

It is difficult indeed to realize the complete dependence of the American colonies upon the markets of the mother country for nearly every article of domestic consumption. Attempts were made by Governor Berkeley to remedy this state of affairs in Virginia by encouraging the growth of

¹ Blair and Chilton.

certain industries after the Restoration. But the policy of the eighteenth century, begun by his successors, was to stifle every infant industry at birth.¹ The colonists were even denied the privilege of making their own clothing, when the low price of tobacco would not enable them to purchase British goods. And every effort was made to prevent the least independence of action,² so that by complete economic subjection, the political supremacy of Great Britain might stand secure.

In Virginia, of all the American colonies, the conditions were favorable to the utmost development of this policy. There were no towns, despite the vigorous attempts to encourage "cohabitation," so that the advantage of concerted action was largely denied, in extorting favorable terms from the English merchants. Each planter was obliged to deal separately with some chosen agent in London, who shipped goods to him in return for his consignments of tobacco. For the whole colony was virtually dependent upon this one staple, their early trade in lumber, hoops and staves having been ruined by the Northern colonies.³ We have already seen how onerous were the customs duties in England; and these burdens were greatly increased by the commissions demanded by these factors. Petty charges for "Tret," "Clough," "Draught" and "Sample" were imposed, oftentimes to the extent of fifteen or twenty shillings a hogshead.⁴ They even went so far as to charge three pence a hogshead for many years, without the consent of the planters themselves, "to defray the expenses in applying to Parliament upon any occasion to relieve us (Virginia) from the hardships we groan under."

¹ Beverley.

² *Calendar Virginia State Papers*, i, 124.

³ Oldmixon.

⁴ A clear statement of these abuses is given in a rare pamphlet entitled: *The Case of the Virginia Planters of Tobacco*, and *A Vindication of the Said Representation*, published at London in 1733.

From these exactions it was impossible to escape in many cases, because the planters were so heavily indebted to the English merchants. The system of keeping open accounts in London was calculated to encourage extravagance; and these accounts were habitually overdrawn. Many of the merchants even made it a rule to encourage this indebtedness, so as to assure the continuance of their customers. It gave them a certain advantage in all their dealings with the planters. The luxury and extravagance of these men as a class was undoubtedly fostered, if not caused, by this continued influence. Once firmly in the grasp of the merchants, extortionate prices were charged for everything, which were often double the quotations at New York or Philadelphia.¹ Thus when it is considered that everything except food was purchased in this way,² it is plain that it was a considerable factor in producing an unfavorable balance of trade with England.

Being, therefore, obliged to exchange their tobacco at a low figure for goods which were charged at an exorbitant rate, there was a steady excess in the value of the imports. And the only way in which this liability could be discharged was by remittances of specie, or by bills of exchange, which amounted to the same thing. As fast as any coin came in from New England in exchange for wheat, or from the Spanish colonies, it was bought up and shipped to England.

During the latter part of the century, moreover, a drain upon the Virginian stock of coin commenced in another quarter. The new commercial colonies of New York and Pennsylvania began to attract a large foreign trade. And

¹ McMaster, *History of the People of the United States*, i, 273.

² A letter of George Washington enumerating the supplies which he needs is a good example of this. The list includes every article of luxury or necessity, from a bust of Alexander the Great to a half dozen halters.—*Writings*, edited by W. C. Ford, vol. ii, 127, 134, *et seq.*

the demand for specie there was greater than in Virginia; for not only did they need it to ship to England, but they also required a large supply in order to carry on their domestic exchanges. Philadelphia was bountifully supplied with money, even more so than England, it was said,¹ in 1696. And this supply was largely obtained at the expense of Maryland and Virginia, and even of Massachusetts.² Maryland, for many years a rural community like Virginia, although setting a higher price upon silver, was well supplied with money. She was even more fortunate in this respect than her neighbor, and interposed to protect Virginia from an excessive drain of specie. Yet even here there was a gradual tendency to attract coin on account of the higher price, which continually lessened the Virginia stock. Their relative condition is expressed by a contemporary as follows: In Maryland "they have Spanish and English money pretty plenty, which serves only for Pocket money, and not for Trade"; but in Virginia "gentlemen can hardly get enough for travelling expenses, or to pay tailor's and tradesmen's wages."³ As for Delaware, there was a goodly income of specie from the proceeds of her fishing trade, which was considerable.⁴

On the whole, therefore, we find that although the Governor's influence in restricting the supply and circulation of money declined during the 17th century, other conditions of trade and commerce were developing to produce the same result. The sphere of action of economic forces was broadening; and it was becoming too powerful to be affected by the interests of any single individual. And, moreover, the causes producing the scarcity of specie were becoming more

¹ Walton's *Annals of Philadelphia*, 88.

² Blair and Chilton; and Alsop's *Maryland*.

³ Oldmixon, 315; and Bozman's *History of Maryland*, 1, 275.

⁴ *Description of New Albion*, Force's *Tracts*, ii.

apparent. The Council in England finally took up the matter, and endeavored to settle the difficulties. And Virginia was at last forced to fall into line with the other colonies, and join in the scramble for hard money. For a half century she had held back, and been stripped of money for the benefit of her neighbors. The move of the home government was the signal for action, and henceforth Virginia became a factor in the situation.

The Monetary Policy of the Eighteenth Century. During the seventeenth century it had been sufficient for all ordinary purposes to regulate the value of money by the piece. This, however, was not adapted to the more complex conditions of trade which were fast developing, and many abuses had been produced. Many of the coin in circulation had been so clipped and mutilated as to have lost most of their original value. The different varieties and alloys had also become greatly confused. For instance, the new Seville piece of eight, containing but 308.7 grains of pure silver, had been issued, which circulated side by side with the old Seville piece of 387 grains fine. As early as 1676, Governor Culpepper preferred to have "the price sett on the ounce, that is certain, and not the piece. For none but extreme light pieces will be brought in, and that (when brought in) with some gain to the importer but losse to the country."¹ Twenty years later the same defect in the law is mentioned, it being the practice of many, especially the tax collectors; who preferred to take tobacco at a valuation below the market price, "to scruple a light piece of eight, affirming it is clipped, or a Peru piece and not good silver, and no other coin is ascertained except English, of which there is very little."² Petitions were also presented praying for a law to "ascertaine at what vallue the said (Dog) Dollers may pass

¹ *McDonald MSS.*, vi.

² Blair and Chilton.

currently from man to man, for ye better advancement of Trade and Commerce."¹

Still another difficulty in the way of regulating the value of current coins by the piece lay in the Act of the 6th Anne (1708), which had already strictly defined the value of the Spanish money. This law, to be sure, was of no effect; but it acted as a check upon legislation. A bill of the Assembly of New York was vetoed for this reason mainly, in 1768,² and there is reason to believe that the other colonies were restrained in like manner.

All of these difficulties were avoided by changing the laws and setting the price of money by the ounce or pennyweight without reference to its denomination. This practice was followed by nearly every one of the American colonies during the eighteenth century. For a time these values conformed to the ones assumed by the 6th Anne, namely six shillings ten pence per ounce; but gradually the peculiar conditions of each separate colony led to a departure from this figure. And the governors seem to have acquiesced in it, as there is no record of a veto on account of conflict with any law of Parliament. Yet although the method of regulating the value of money was changed, there was no abatement in the active competition between the colonies for the current coin. The same bidding was carried on in this new

¹ A petition presented in 1697 runs as follows: "That wheras, muneys, being made of Currant Vallew, it is the only and most Convenient Ballance for carrying on all Trade and Commerce, and forasmuch as Experience Informeth us that our neighboring provinces by enhancing The Vallew of all foran Quoine, Do Draine from this Government such muncys as by severall opportunity Doth Happen to be brought among us; We Tharfore propose That a Certaine Vallew & Advance may be sett, not only upon Dollars, but upon all sorts of foran quoine which may Excede the Vallew of gt. Sterling, Which would tend much to the Incouragement of Tradesmen who are at p'sent discouraged by Reson, are forced (If Deale at all) to Do it mostly upon trust."—*Calendar Virginia State Papers*, i, 53.

² Hickcox, *A History of the Bills of Credit or Paper Money issued by New York*, 44.

form, that is to say, by fixing the price by weight and not by the piece. It is, however, extremely difficult to compare these prices, owing to the fluctuations of the paper currencies and the different values of the shilling in the various colonies.

The price per ounce for silver-plate in Massachusetts in 1672 was six shillings eight pence;¹ in 1702 before the depreciation of its paper currency it was six shillings ten and a half pence; the act of the sixth Anne established it at six shillings ten pence.² Pennsylvania previous to this time had bid as high as eight shillings two pence per ounce for it,³ although in 1709 it had temporarily conformed to the British valuation, by rating it at six shillings ten and a half pence. As no paper was issued here until 1723, it is probable that depreciation may be disregarded; and the piece of eight was still reckoned at five shillings, or even less,⁴ so that the unit was the same as in Virginia.⁵ The valuation in New York was often as high as seven shillings six pence per ounce, computing the piece of eight at nine-tenths of an ounce.⁶ In South Carolina the price had been six shillings three pence per ounce previous to 1710, with the shilling equal to the Virginia rate of five to the dollar.⁷ The price in Maryland, assuming the piece of eight at nine-tenths of an ounce, and reducing it to the Virginia shilling, must have been below six shillings.⁸

This was the condition of affairs when the Virginia Assem-

¹ Hickcox, *An Historical Account of American Coinage*, 9.

² Phillips, *Historical Sketches of American Paper Currency*, i, 153. ³ *Ibid.*, i, 19.

⁴ *Ibid.*, i, 12-13.

⁵ Oldmixon, 315; Hickcox, *A History of the Bills of Credit or Paper Money issued by New York*, 10.

⁶ This computation is based on data in Phillips, i, 27 and 109; Felt, 59; and *American State Papers, Finance*, i, pg. 104, *et seq.*

⁷ Carroll, *Historical Collections of South Carolina*, ii, 258. ⁸ *Ivide* note, p. 115.

bly met in 1710. We have seen that the price set upon the piece of eight had been much lower than in the other colonies, with the inevitable result that coin was more scarce in Virginia than elsewhere. At just this time, there was considerable depression in the tobacco trade, and this scarcity of money was increased by the necessity of large exports of silver. Petitions were presented for commutation of money debts to tobacco, so great was the scarcity of specie.¹ These were refused, but it was seen that something must be done. The matter was not simple, however, "the great Difficulty being to settle a Currency without prejudicing her Maj'tie's Revenues."²

To remedy these evils the Burgesses, ostensibly in pursuance of a proclamation issued by Queen Anne in 1704, ordered that all pieces of eight, Pillar Ducatoons, "Eccus of France or Silver Lewis and all halves, quarters and lesser pieces of the same," shall pass at the rate of six shillings three pence the ounce. Peru pieces and the like were rated somewhat lower.³ This was virtually raising the value of the full-weight Spanish dollar from its customary rate of five shillings, to about five shillings eight pence. In fact, it is but a repetition of the attempt made by Governor Culpepper in 1683. It was likewise provided that this new regulation should not affect the rate of settlement for all foreign debts, or for the Royal revenues. A special clause was inserted, which exempted all such payments. It is probable that the consent of the Governor was obtained only upon this condition; and thus alone was "the great difficulty" avoided. This was certainly the case in other proprietary colonies, and the same interests had to be conciliated in Virginia. Therefore, we see the people and the Assembly

¹ *Calendar Virginia State Papers*, i, 145.

² *Spotswood Letters*.

³ Henning iii, 502.

agreeing to precisely the same act, which was so stoutly resisted a quarter of a century earlier.

This law placed Virginia in a more favorable situation to compete with the other colonies. She was on terms of equality with her southern neighbors, as we have seen. The price offered for silver was not much, if any, less than that which prevailed in Maryland. And both of these colonies could afford to rate silver lower than the Philadelphia figure, for the foreign demand for it was much less. Here in Virginia the rate of exchange varied from twenty-five to thirty per cent. premium, while in the great seaports it ruled from sixty to ninety per cent above par. Moreover, there was less demand for money in domestic trade. Thus Virginia could afford to stand somewhat aloof from the scramble for specie, as in fact she had done previous to this time.

The depression of the tobacco trade continued until 1714, and coin was still much needed. It was the demand for currency at this time in fact which indirectly led Governor Spotswood to introduce the tobacco notes. The silver question had been settled for a time, but now it was discovered that the values of the gold coin in circulation were "unsettled, disproportionate to others of the same intrinsic value, and all unequal to the coined gold of Great Britain."¹ Of course, we know that it was the currency standard and not the gold which varied, but this was not appreciated at this time. Gold was, however, to be accepted in exchanges by the provisions of this act at five shillings the pennyweight.

Most of the colonies had overvalued gold previous to the law of Parliament of 1708. South Carolina rated it at six shillings three pence per pennyweight in 1700.² In Pennsylvania, the price was seven shillings per pennyweight from

¹ Hening iv, 51.

² Carroll, *Historical Collections*, ii, 258.

1700-9, and the ratio to silver was fifteen and two-tenths to one. In 1709, however, this was reduced to five shillings six pence per pennyweight, and the ratio to silver became sixteen to one.¹ These values were reckoned in shillings at five to the dollar then, and since no paper had yet been issued, there was little correction for depreciation. This ratio, sixteen to one, was adopted by Virginia in 1714, but the values of both gold and silver were lower than those prevailing in Philadelphia at that time. Thus there was still a premium upon the export of coin to this commercial centre. Yet this action was necessarily slow where coin was so scattered as it must have been in Virginia. After 1714, there was also a return of prosperity to the colony; tobacco rose in price, and every one was content. Moreover, for a time, the tobacco notes were utilized; and although unpopular, they served as a substitute for money.

After 1720, the demand for specie in the northern colonies became more urgent. Commerce was rapidly developing, and more money was needed. As a consequence, the price offered for specie rose rapidly. It was aided also by another consideration—namely, that the rate of sixteen to one had undervalued silver in proportion to gold; and this was corrected by raising the price of silver. In 1730, silver was rated at seven shillings five pence per ounce in Philadelphia,² at which rate it remained until the emission of the first paper money three years later. And then it rose to eight shillings three pence the ounce, the ratio to gold ranging from fourteen and eight-tenths to fifteen and three-tenths to one. In 1716, in New Jersey, silver was at eight shillings per ounce.³ New York rated it at this same figure in 1712, although it apparently commanded eight shillings

¹ Phillips, *Historical Sketches of American Paper Currency*, i, 19.

² Phillips, *op. cit.* i, 19.

³ *Ibid.*, i, 61.

six pence in 1723.¹ Thus it appears that in Virginia not only was gold rated at a lower figure than in the other colonies, but also, since the ratio to silver was abnormally high, that this latter metal was doubly depressed in value.

In February, 1727, an act was passed to remedy this matter and to bring "silver coin to a nearer proportion to that of the gold currency." It was stated that the value of this silver coin was greatly disproportioned to the value at which the coin passed in the neighboring plantations.² The ounce of silver was raised in value from six shillings three pence, fixed by the law of 1710, to six shillings eight pence, thus making the rates to gold nearer the customary figure of fifteen to one.³ The English crown was likewise raised in value from five shillings ten pence to six shillings three pence. The only provision in regard to gold was to prohibit the circulation of all clipped coin as money. This was intended to check the currency of base metal and counterfeit pieces.

The only other legislation during the colonial period intended to attract specie, was a provision inserted in the revenue acts after 1726. The duty upon slaves was paid by the purchaser, and not the importer, it will be remembered. And an allowance of fifteen per cent. was made to all who paid for the slaves so purchased, in money which they themselves had imported. This customary allowance remained in force until 1781, when it was increased to twenty-five per cent. It was thus but a part of the general fiscal policy of the colony, which had induced the prohibition of the export of money at an earlier day. The need of money also led to the passage of various laws to provide for the coinage of copper money, whenever the King should see fit to provide

¹ Hickcox, *A History of the Bills of Credit or Paper Money issued by New York*, 11 and 20-1.

² Hening iv, 218.

³ Laughlin, *History of Bimetallism in the United States*, Appendix ii.

for it. This provision of the act of 1642 was re-enacted in 1726. It is probable that William Wood issued a few coins under this law, but the amount was insignificant.¹ In 1769 another law was passed to purchase £2,500 of copper for small money.² This was reduced to £1,000 in 1772; and various inducements were offered to private individuals to take it up; but they all alike failed.³ Jefferson in his correspondence says that "in Virginia copper coins have never been in use."

The result of this hurried survey of the legislation of Virginia, during the first half of the eighteenth century, only confirms the impression conveyed by its previous history, that there was really a considerable amount of money current in the colony in normal times. The situation in fact was rather favorable than otherwise. Virginia was the only colony, except Georgia, which was not forced to issue paper money during a time of peace. A contemporary writer in the *London Magazine* of July, 1746, declares that paper money was "not taken on the Western Shore of Chesapeake, where only Gold and Silver is current." As we have already seen, the public dues were generally paid in tobacco notes after 1730; but this custom does not seem to have been universal by any means. Some counties always paid in money, and some were allowed to pay in coin whenever tobacco rose above a certain price.⁴ But those individuals who did so pay were examined before the county courts, and their names were entered in a special register. The difficulty seems to have been not in procuring the coin so much as in establishing a just ratio between specie and tobacco.

A peculiar custom prevailed for many years, whereby the "wages" of the Burgesses were paid in money and not in

¹ *Virginia Historical Collection, New Series*, i, 55.

² Henning viii, 343.

³ *Ibid.*, viii, 535.

⁴ *Ibid.*, v, 169; vi, 568; vii, 240.

tobacco. This was first tried in 1723, when it was intended "for the relief of the people;" and it proved to be popular with the members of the legislature at all events, for it was continued until the outbreak of the Revolution. It is a peculiar commentary upon the disinterestedness of the Burgesses that in proportion as specie became scarce the payment of money "wages" was made more rigorous. As for instance, until 1772, no money was paid unless there were a balance of £1500 in specie in the treasury; but at that time, when specie was fast disappearing, payment of "wages" in money was ordered, whether there were a balance of coin or not.¹ The special significance of this custom to us here is that it shows that money was habitually in circulation, even during the period of paper currency.

The price which was fixed for silver, six shillings eight pence currency an ounce, in 1727, was apparently about the normal value of it at that time. It was the customary price in Massachusetts, as early as 1672;² and it was the rate which was adopted on the return to a specie basis in 1749.³ Rhode Island followed suit in 1756.⁴ Pennsylvania had already in 1742 fixed the value of an ounce at eight shillings six pence of her currency, at seven and one-half shillings to the dollar.⁵ There being but about six to the dollar in Massachusetts and Virginia, this value of eight shillings six pence, was really about six shillings eight pence when reduced to their standard. The reason why this value was finally determined upon was because it corresponded best to the actual value of silver in the markets of the world. This price after 1750 varied from five shillings two pence to five shillings eight pence sterling the ounce.⁶ And this value will be

¹ Hening v, 172 and 104.

² Hickcox, *An Historical Account of American Coinage*, 9.

³ Hutchinson, *History of Massachusetts*, 435. ⁴ Phillips, i, 111. ⁵ *Ibid.*, i, 27.

⁶ Franklin's *Report to the Board of Trade*, February 5th, 1764; cf. Adam Smith, *Wealth of Nations*, book i, chap. v.

seen to bear a relation to the price fixed in Virginia, of approximately three to four, which corresponds very nearly with the relative values of the shilling "sterling," and the shilling "currency."

If then this rate of six shillings eight pence the ounce was just about the normal figure, it probably left the specie in circulation to adapt itself to the variations of demand and supply easily and quickly. It was formally established as the legal rate in 1792 again at \$1.11 per ounce;¹ which rate was not altered again by the State, since it thenceforth became subject to the laws of the United States. This was a little above the old figure of six shillings eight pence, for the Virginia dollar had been equal really to less than six shillings. Jefferson tells us that the first sign of the depreciation of the Virginia currency during the Revolution was the rise of the dollar to six shillings.² It had formerly been computed at five shillings nine pence, although it passed for six shillings in trade. In 1782, however, the rate of six shillings to the dollar was made the legal ratio,³ and it so remained until 1850.

It remains now to deal with the value of the gold coin, which was fixed in 1714 at five shillings per pennyweight. The value of silver as compared with gold seems to have risen steadily during the period from 1700 to 1760. In 1700 the ratio was about 15.27 to 1, and it fell to 14.56 to 1 by the middle of the century. After this time it rose again to about 14.76 to 1 by 1790.⁴ This relative change in value does not seem to have affected the price of silver in Virginia as we might expect. Instead of this, the value of the gold coin was proportionably advanced. The rate of five shillings was raised in 1782 to five shillings four pence the pennyweight;⁵

¹ Hening xiii, 477.

² *Notes on Virginia*, 285.

³ Hening xi, 117.

⁴ Laughlin, *History of Bimetallism in the United States*, Appendix ii.

⁵ Hening xi, 117.

and in 1798 the dollar was worth twenty-seven grains, which is about the same price.¹ This would be about four pounds sterling per ounce, while the price in England was about three pounds seventeen shillings six pence.² Gold was thus overvalued in relation to silver, the ratio being sixteen to one; while the true proportion was less than fifteen to one, as we have seen. This was indeed in accordance with Jefferson's theory, for he desired to "lean to a proportion somewhat above par for gold."³ Spain established the ratio at sixteen to one, and our considerable commerce with her colonies would naturally lead to the adoption of their standard ratio.

Of course during the Revolutionary period all specie was banished from circulation by the issue of paper money. But coin was brought into Virginia in considerable quantities by Rochambeau's army and the French fleet. It is estimated that there was above £1,500,000 sterling in the colonies in French money alone, at the close of the war.⁴ It was even used by the people as ready change; the Marquis de Chastellux observed that it was so plentiful as to be used as "cock-fight money." But this soon disappeared, and in 1788 Warville tells us that the small expenses of town families were doubled because of the lack of hard money and change. The dollar was cut into three pieces, each of the two outsides passing for a half dollar. The cut coin was everywhere seen, and was known as "sharp shins."⁵ In 1786 Madison wrote that "the internal situation of this state in growing worse and worse—our specie has vanished."⁶ This evil was however corrected soon after the adoption of the Constitution. In 1795 the currency of all cut silver and

¹ *Shepard's Statutes*, ii, 84. ² Adam Smith, *Wealth of Nations*, book i, chap. v.

³ Laughlin, *History of Bimetallism etc.*, 11.

⁴ Chastellux, *Travels*.

⁵ McMaster, *History of the United States*, ii, 12.

⁶ *Letter*, May 12th, 1786.

clipped coin was prohibited, and the Assembly resolved that it should all be sent to the United States mint for recoinage.¹ Henceforth all participation of the state in the regulation of money ceased, and the Federal Government assumed the burden which had been so wisely borne by this Commonwealth.

The Value of the Virginia Shilling. One more question in regard to Virginia's money demands our attention. How did it happen that six shillings made a dollar? This value is found nowhere else except in New England. Virginia's neighbors differed widely from her in this respect. In Pennsylvania and Maryland, on the north, the dollar equalled seven shillings six pence, while the North Carolina and New York shilling was worth one-eighth, and not one-sixth of a dollar. To be sure, the law of the 6th Anne declared the precursor of the dollar to be equal to six shillings of colonial currency. But this does not explain why Virginia stands alone among the southern colonies in adopting this ratio. It could not have been due to political affiliations merely, for Massachusetts, the most independent of all the colonies perhaps, adopted the same value for her shilling.

The special importance of the matter lies in the fact that these values persisted as a legal money of account long after the adoption of the Constitution.² In fact the fractional currency itself remained in circulation in rural districts until the act of 1853, which reduced the value of subsidiary coins, drove them out. Nothing but the names remain to-day, as the "Yankee ninepence" (12½ cents) and the "York shilling." Yet these names are the relics of certain actual coins which served as a medium of exchange for our forefathers. In Virginia there were two distinct moneys, the pound sterling, equal to the English coin, and the pound currency, con-

¹ Shepard, *Statutes*, i, 233, 284.

² Shepard, *Statutes*, ii, 44.

sisting of foreign coin, which was reckoned at \$3.33, or about two-thirds of a pound sterling. In conformity with this proportion the shilling currency was worth $16\frac{2}{3}$ cents, and a nine-penny piece equalled $12\frac{1}{2}$ cents. Thus it took six shillings to make a dollar when that unit was adopted in 1791.

Two reasons for this diversity of values among the colonies have been advanced. The one which is commonly accepted, is that it is the result of an arbitrary fixation of the value of certain moneys by the colonial legislatures, in order to attract or retain as large a share of the coveted coin as possible. The theory is that since this arbitrary value was maintained constant for some time, it gradually won adoption as the proper rate and has persisted in custom even after the repeal of the laws themselves. Now this theory may be plausible enough as an explanation of the process, but it does not touch the ultimate cause. It does not explain why these values were so different, if the desire for a specie circulation was equally great in the various colonies. If the legislature of Georgia could successfully affix and maintain a value of twenty cents to the shilling, why was Virginia compelled to stop at a valuation of twelve and a half cents if she needed the coin? It is presumable that the Assemblies of both these colonies were equally provided with legislative energy, and with ink and paper. But it may be urged that Virginia perhaps was too conscientious or too wise to commit herself to a policy of inflation, knowing the inevitable result. Yet Massachusetts and Rhode Island were restrained by neither of these considerations; and they did not succeed in enhancing the value of their specie. To this first theory then it may be answered, that laws do not as a rule make conditions, but are rather the effect and outcome of them. There is no axiom in economic science more evident in the light of experience than that laws *per se* are

powerless in the long run to prevent the natural gravitation of specie to the most favorable market. They may alter the conditions of the market, it is true; but these remaining constant, they cannot hold the elusive specie. Legislation may affect the value of money to a limited extent, as occurred in Virginia in 1710 and 1727; but the change of prices which must soon follow tends to nullify this advantage. Another objection to this theory is the fact that oftentimes these values were not made by law at all. In Pennsylvania, for instance, the ratio of seven and one-half shillings to the dollar was at first a convention among the Philadelphia merchants.

The second theory by which these values of the shilling, so different from the English standard, are explained, is that it was the result of a depression from the standard, by reason of excessive issues of inconvertible paper money. The old arithmetics explained it in this way; and many facts seem to lend countenance to it. Yet, however true it may be for other colonies, as in South Carolina for instance, we may dismiss it at once so far as Virginia is concerned. In this commonwealth there was no issue of paper money until long after the colonial currency had become completely differentiated from the English standard. And when treasury notes were finally emitted, they were comparatively well secured by taxes, so that their credit was generally sustained. Moreover, the value of the shilling was hardly affected at all, when depreciation did really occur during the Revolutionary period.¹ We conclude, therefore, that whatever may be true as to the other colonies, this theory is entirely inadequate to serve as an explanation of this phenomenon in Virginia.

Thus we are compelled to seek a cause behind, and in addi-

¹ *Vide Wright's American Negotiator, Int.*, v, and viii.

tion to, the apparent one which has sufficed for so long as an explanation. Was there not a cause which, operating upon trade in each particular case, produced the condition of affairs which we have observed? Even where the validity of the paper money theory is admitted, it is probable that there was a deeper cause which induced legislation. Might it not have been the varying intensity of this hidden force, which compelled the several colonies to resort to the precarious expedient of paper money in the first instance—the extent of these emissions being in some measure proportioned to the magnitude of the force itself?

We find the explanation of this complicated problem mainly in the inexorable conditions of the foreign trade, as it was regulated in the selfish interest of Great Britain. The influence of this in compelling the colonies to the issue of paper money has indeed been recognized. But here in Virginia we see the difference between currency and sterling fixed long before any paper money appeared. It will be remembered that the price of silver fixed in normal currency in 1727 remained in force until the end of the century, despite all the exigencies of the wars intervening; and yet this price was one-third higher than the price of silver in London reckoned in sterling money. How did this come to be adopted as the ratio?

The Spanish money which formed the larger part of the coin in circulation during the seventeenth century in Virginia, was worth from fifteen to twenty per cent. less than the English sterling coin;¹ and sterling bills on London were apparently worth about ten per cent. more than this English money. Thus the rate of exchange on London, reckoned in current Spanish money, probably stood at twenty-five to thirty per cent. premium, more or less—a fact upon which

¹ Hening iv, 319; Hugh Jones, p. 45.

we have already commented. The planters kept all of their credits in London, computed at their value in that market where they alone could purchase whatever supplies they needed. It must always be borne in mind that there were no towns, or seaports; and therefore, that there was little commercial intercourse between the planters themselves. Each one dealt independently with his London factor; but all living substantially the same sort of life, there was but little variation in the rates of exchange for each group. Thus each one computing the value of his crops, in which all property and profits were measured, naturally rated them in terms of the commodities which could be procured in exchange for them. There was no market in Virginia; all transactions were necessarily made on a London basis and, therefore, were reckoned in sterling money. But this money itself was not present in the colony; there was practically nothing but Spanish silver in circulation, and this was worth only three-fourths of the sterling money. If a planter desired to increase his London balances, or to pay for goods purchased there, he was obliged to pay about one-third more than the London price, since he had no money except this Spanish coin or bullion, which could be shipped in settlement. This fact coupled with the constantly unfavorable balance of trade compelled him to pay a premium for everything which he bought.

This premium of about twenty-five per cent. for London exchange was maintained with remarkable constancy. Apparently it was the rule during the second quarter of the seventeenth century, as we have seen. In 1775 it was fixed at twenty-five per cent. by law as the just ratio of currency to sterling.¹ The rate of exchange in 1759 rose apparently to one hundred and forty, at which point specie was sent to

¹ Hening vi, 479; and *Richmond Despatch*, September 22nd, 1877.

Philadelphia to buy bills of exchange, which were sold in Virginia at a profit.¹ This, however, was due to the slight depreciation of the paper money. In 1761 the par of exchange in London was one hundred and twenty-five.² During the Revolution it rose as high as one hundred and fifty, owing to the depreciation of the paper money.³ After this time, when the value of the standard was depressed somewhat by over-issues of paper, the rate of one hundred and thirty-three per cent. was adopted in legal practice. For a time judgments for sterling debts were computed at the exact rate of exchange then ruling; but gradually the method of allowing this fixed proportion of one-third premium was adopted by the courts.⁴ Thus it became customary to account six shillings of currency as equivalent to four shillings six pence sterling in London, where alone it could be expended to any purpose. The Virginia-Spanish shilling was really worth only three-fourths of the sterling coin. When the dollar was adopted, worth a little above four shillings, the currency gradually fell into place as one-sixth of this new coin, the nearest ratio in round numbers. Until the reformation of the gold coin in England, four and one-half shillings equalled the precursor of the dollar; but with the appreciation of the silver coin, consequent upon that change, the ratio approached more nearly that of four to one, at which it stands at the present time.⁵

This theory seems to be sustained by the facts observed in the other colonies. It is complicated here, however, by the presence of fluctuating paper currencies during the later

¹ Burnaby's *Travels*, 717. ² Wright's *American Negotiator*, London, 1761, p. v.

³ *Calendar Virginia State Papers*, ii, 235.

⁴ *Virginia Law Journal*, August, 1877; Shepard, *Statutes*, i, 34; *Journal of Assembly*, May 25th, 1770; and the case of *Wickham in Terrell vs. Ladd*, 2 Wash., 150.

⁵ Adam Smith, *Wealth of Nations*, book i, chap. v.

colonial period, which undoubtedly influenced the course of development to a certain extent by depressing the value of the paper currencies. But even in these cases differences between sterling and currency money are observed long before any emission of bills of credit. As early as 1685 English coin was "something above one-third higher" than country money in Pennsylvania;¹ and the rate of foreign exchange—that is, the price for sterling in London—must have exceeded this by the premium required for interest, insurance and cost of transportation. Franklin affirms that the customary rate of exchange in the middle of the century was one hundred and sixty to one hundred and eighty-five, while the depreciation of the paper money was slight in amount.² A very simple calculation will show that this rate is nearly proportional to the ratio existing between the English shilling at twenty-two cents, and the Pennsylvania shilling at thirteen and one-third cents.

In New York the premium was somewhat higher previous to the issue of paper money, owing, it was said, to the demand of importers for specie to settle foreign balances. In 1748 the rate of exchange stood at one hundred and ninety computed in paper, which was not yet depreciated to any extent.³ In 1761 it had fallen to one hundred and seventy-five. As a rule the rate was somewhat higher here than in Philadelphia;⁴ and at the same time the shilling was worth less in sterling than it was in Pennsylvania. Our theory assumes that these relative values were maintained, not

¹ Gowan, *Bibliotheca Americana*, i, 354.

² *Works*, ed. 1809, ii, 350; Appendix, 421; Hickcox, *A History of the Bills of Credit, or Paper Money issued by New York*, 37; *American State Papers, Finance*, v, 104.

³ Bozman, *History of Maryland*, ii, 391; Hickcox, *A History of Bills of Credit, or Paper Money issued by New York*, 37.

⁴ Wright's *American Negotiator*, v.

because the shilling was of different value, thus fixing the rate of foreign exchange, but because that natural rate of exchange was different, which led to a depression of the currency standard to proportional degrees in each case. These relative proportions being maintained constant for some time, the value of the shilling became fixed in conformity with it, and so persisted in customary reckonings after the abolition of the currency itself.

Of course it will be objected at once, there must necessarily be this close correspondence between the rate of exchange and the value of the colonial shilling. For does not the one serve to measure the other? To show this relation is merely to prove a self-evident truth. This being so, is there not as much reason for asserting that the value of the shilling caused the rate of exchange, as for the contrary proposition? To this we answer, that this might be admitted, if any cause could be assigned for the value of the shilling in the first place. But we have shown already that the different values of the currency in the colonies cannot be explained by any conditions entirely resident in the colonies themselves. The same Spanish money being present in all of the colonies, the effect of this alone would be to make all of the values uniform, which did not occur. This currency, therefore, appears as an inherently passive factor, and not an active agent. To be sure there was a greater demand for money for domestic trade in certain of the commercial colonies, such as New York and Pennsylvania, than was the case in Virginia; and it is natural, therefore, that the shilling should bear a higher value in those places. But this does not explain the case of North Carolina, where the value was the same as in New York! Neither does it account for the equal values of the shilling which prevailed in Massachusetts and Virginia. In both these cases the internal conditions were widely different, and yet the phenomena are exactly

alike in both places. Thus we are forced to turn to external factors once more. It must have been the foreign demand for specie, and not the extent of the domestic use, which was the primary factor. And the probability remains that it was the condition of the foreign trade, which so regulated the demand for remittances of coin that the shillings gradually conformed to it by necessity. It was the bidding for money to supply this demand, which finally established the rate at which it passed in circulation.

In several respects Virginia was favorably situated in comparison with the other colonies. There was a constant demand for her staple commodity in England, which, although limited by onerous customs duties, was not absolutely prohibited, as was the case with many of the products of the middle colonies. Then again she was not made to bear an undue share of the burden of paying for imports for her neighbors, as was the case with the commercial colonies. And lastly, the domestic demand for money was less, in the absence of towns. The slave obviated the necessity for a wage fund; and the tobacco notes were a ready substitute for money. To be sure, the supply of coin from the Spanish West Indies was largely obtained indirectly through the other commercial colonies; but even here the close relations with New England for many years were a partial equivalent.

Virginia, therefore, had to struggle against lesser odds than some of the other colonies. If it was indeed the unequal pressure put upon the coin, which caused the great diversity in the standard among them; and if it be true that Virginia had less to bear in this respect; it is natural to expect that the value there will depart less widely from the English standard than was customary in other places. The whole monetary history of the Commonwealth has shown that the need for specie was less urgent than elsewhere.

The value of current coin was never raised until after all her neighbors had bid it up, and were threatening to rob her of her just proportion. And even as she was backward in this matter, so also was the progressive depression of her standard restricted. It went on, as we believe, until the proper proportion to suit the conditions of the foreign trade was reached. There it was arrested naturally, and the value of the current money stood as an indication of the general balance of her trade with Great Britain.¹ This alone determined it in those times; for there was no other trade, and could be none until the whole hateful system was abolished in the course of time.

¹ Wright's *American Negotiator, Int.*, viii.

CHAPTER VI.

PAPER MONEY.

Tobacco Notes. Besides the ordinary money which was in circulation in Virginia, a supplementary currency was used, which has never been adequately understood. Those who have written of it at all, have treated it so loosely that its true significance has been lost. We shall see that it did not serve as a complete substitute for specie; for it was confined to certain localities in the colony and, moreover, it was not a legal tender for all debts. Nevertheless, it was an ingenious contrivance for supplying the monetary needs of a simple community, insufficiently supplied with metallic currency.

The whole of the seventeenth century is marked in Virginia by a continual struggle against fate to uphold the price of tobacco. Expedients of all sorts were tried; restrictions were imposed upon planting, and crops were half destroyed; agreements were made with Maryland and the Carolinas to secure united efforts; but it was all in vain. After a time, however, the depreciations seem to have come to a stop, so that prices did not vary extensively after 1700.¹ Public inspection of tobacco had existed in Virginia from the earliest days. In 1632 warehouses were erected to be under the charge of appointed keepers. No tobacco was allowed to pass in payment of debts until it had been overlooked. And all such debts were settled at the warehouse by a mere transfer of book credits.² This system, with some modifica-

¹ *Vide* quit-rents, *supra*.

² Hening i, 204.

tions for the more sparsely settled districts, where warehouses could not be located conveniently, was adhered to until about 1700.

About this time the need for a reform was apparent to all. There were two inconveniences in the old method of making payments in bulk tobacco. In the first place, it was costly and cumbersome,—objections which were urged in New England about the same time against the payment of levies in grain.¹ We are presented in history with the pleasing spectacle of “gallant young Virginians hastening to the water-side, each carrying a bundle of the best tobacco under his arm” in order to purchase a wife.² This was perhaps well enough when tobacco was rated at three shillings a pound. But when it had fallen to two pence per pound, the burden of these ardent lovers would have amounted to above two tons. It is difficult to conceive of even a gallant Virginian “hastening” under such circumstances. As for transportation by wagon, it was next to impossible, since the roads were so few and bad. The numerous creeks and rivers were used, but with the extension of the settlements into the interior, the difficulties were vastly increased. The second evil of this system was the liability to fraud and deception, which could be easily practised by designing debtors. And the government was the most important creditor in this respect. The Governor said, “The Publick Credit is so sunk by these payments, that, as now, no service is readily performed for them. So I am confident no money could in any Exigency be borrowed upon the faith of them.”

The tobacco notes which were introduced by Governor Spotswood were intended to remedy these abuses. The

¹ Felt, *Historical Account of Massachusetts Currency*, 53.

² Gouge, *A Short History of Paper-Money and Banking in the United States*, 4.

³ *Calendar Virginia State Papers*, 1, 168.

primary object, however, was to secure a more stable value for the tobacco which was received in payment of the quit-rents.¹ It will be remembered that these dues, originally payable in money, had been commuted to tobacco at a fixed rate, at the earnest solicitation of the people. About 1710 the Governor began to consider the question seriously, and his correspondence is filled with discussions of the problem. At last he decided upon a bill providing for a more rigid inspection of tobacco, which had been neglected for some years. With this was to be instituted a "convenient method that establishes for the making all P'ments by the agents notes, which are to pass like Bank Bills."² The Governor was evidently proud of this idea, for he wrote to the Board of Trade: "I must owne myselfe to be not only principally concerned in framing the Bill, but even from the beginning the Sole Author of the Scheme."

This was not a fact, however. Already in 1685 a pamphlet was published by one Budd, advocating the issue of notes,³ based upon the deposit of duly inspected hemp, flax, linen and other commodities in public warehouses. This project was revived in Virginia even in 1705, when tobacco was proposed as the basis for such a currency.⁴ Nothing came of either of these proposals, and it remained for Governor Spotswood to secure a practical application of them. The system was actually introduced in accordance with his plan, although there is no record of any such legislation in Hening's Statutes. The law was satisfactory to the government apparently; the Governor wrote of it two years later, "The scheme is likely to answer fully my expectations—the Publick Credit which was one main end thereof being

¹ *Spotswood Letters*, ii, 61.

² *Letters*, December 29th, 1713.

³ *Good Order Established in Pennsylvania and New Jersey*, reprinted in Gowans, *Bibliotheca Americana*, i, 337.

⁴ *Calendar Virginia State Papers*, i, 96.

now raised above two hundred per cent."¹ Unfortunately there was determined opposition to the law on the part of the planters. A sheriff of Essex County complained that "the people's inclinations are so great against the Tobacco law, that they have not meet me to pay their Dues, so yt all are unpaid. They further signifie Their Dissatisfac^{on} by burning one of Mr. Buchner's Store houses, by running away with their Tob^o to buyers, so yt its near if not quite all sold."² The difficulty finally merged in that struggle of the colonists to secure control of the quit-rents for their own use, which resulted in the suspension of Colonel Ludwell, the Auditor. At last the law was repealed, in obedience to the popular clamor. Perhaps the best criticism of it is that "though the first design was for public tobacco only, yet the private crops of gentlemen being included in the law was esteemed a great grievance, and occasioned complaints which destroyed a law, that with small amendments might have proved most advantageous."³

No further attempt was made to reintroduce this note system until 1730, when it was established in a slightly different form which gave less offense to the planters. This act "For Amending the Staple of Tobacco; and preventing Frauds in His Majesty's Customs," was passed by the Assembly with two distinct objects in view. The first of these was to provide for such inspection of the staple export of the colony as should prevent it from being brought into discredit abroad, to the damage of the general interests of the colony. The second and minor object, was to provide a convenient medium of circulation for local or domestic exchanges, and especially for the payment of taxes, quit-rents, fees and other public dues. In this latter sense it may be

¹ *Letters*, March 28th, 1715.

² *Calendar Virginia State Papers*, i, 181.

³ Hugh Jones, *Account etc.*, 556.

regarded as a mint regulation to prevent fraud in the payment of debts through debasement of the medium of exchange. Since our purpose is to show its fiscal importance merely, this latter object alone will be held in view. The first consideration belongs rather to a history of commerce. The act of 1730¹ provided that no tobacco should be exported from the colony, or used in the payment of any public or private debts, until it had been inspected by two public officials appointed by the Governor on the nomination of the county courts. This tobacco was then to be deposited in casks in public warehouses, conveniently located in each county for that purpose, there to remain until it was exported. If it were to be used for the payment of any domestic debts, "promissory notes" were issued to the full amount of the tobacco on deposit. These "transfer notes" were to state the amount, the particular brand, the date of deposit and the warehouse wherein the tobacco lay. They were to be a legal tender for all tobacco debts in that particular county where the warehouse was located, or in any adjacent ones, not separated from it by one of the great rivers. They were to be convertible into tobacco on demand at the warehouse where the tobacco was deposited, but they were not to constitute a lien upon any particular casks; they were merely representative of a given amount of tobacco of a certain grade. In order to prevent discrimination or inequality in the payment of public debts, due to the difficulty and cost of transportation to the warehouses from different places more or less distant, certain drawbacks were permitted. These varied from thirty per cent. in the inland counties to ten per cent. on the shores of Chesapeake and on the great rivers. For private exchanges, however, such drawbacks were neutralized by reimbursing the creditor

¹ Hening iv, 251.

from tobacco levied by the county courts for that purpose. In case of destruction of the warehouses by fire or flood, the Assembly held itself liable for the loss incurred.

A substantial addition to this system was made in 1734, when a second variety of circulating notes was authorized.¹ This was to provide for the case of the "private crops of gentlemen," which gave so much offense in the first law. This law applied to all tobacco which was merely stored awaiting export, and not intended for the payment of public dues. For such tobacco, so-called "crop notes" were issued against specified hogsheads which were distinctly branded and specially reserved until the notes representing them should be presented. The inspection for this tobacco was less rigorous, and the fees were only about one-half as great as those allowed for the inspection of transfer tobacco. Provision was made for an exchange of crop for transfer notes by the payment of an additional fee.

These two varieties were as distinct from one another as are the United States Silver Certificates and the Treasury Notes of 1890. The crop notes, like the Treasury Notes of 1890, were mere issues of paper against the deposit of a commodity in bulk. The transfer notes on the other hand, issued against minted tobacco, so to speak, resembled the Silver Certificates which are issued against coined silver dollars. Yet, strange to say, their legal tender qualities were exactly reversed. In Virginia the minted tobacco representatives were a legal tender for all tobacco debts, while the notes issued on mere crop tobacco were denied that quality at first. In the United States, the Treasury Notes issued on coined dollars are not legal tender, while the representatives of mere silver bullion are receivable for all debts. Of the two, the Virginia plan seems more reasonable. We must beware,

¹ Hening v, 388.

however, of carrying the analogy too far. For in the United States silver is a rapidly depreciating commodity, while tobacco during the eighteenth century held its own bravely.

This system underwent but few modifications in the colonial period, except so far as changes in administration were made necessary by the increase of population and the determined attempts to evade the law. The transfer tobacco which was received in the payment of public debts was sold annually, and the proceeds were devoted to the proper uses. They were not to pass current after that year, but others were substituted for them. Gradually the crop notes seem to have become used for the payment of debts, which apparently was not the original intention of the legislators. This led to considerable frauds, and in 1748 a more stringent law was enacted, strictly and effectively limiting the legal tender quality to the transfer and crop notes.¹ The system was suspended for a time during the war of 1755, but in 1761 was revived in the old form. The only change previous to the Revolution was a reduction of the time of deposit for crop tobacco notes from eighteen to twelve months. This was found necessary to prevent the great waste from shrinkage.

The act to continue this system having expired in 1775, the Assembly resolved to substitute payment in bulk for the use of notes.² All public dues were henceforth to be rendered in clean tobacco tied in bundles. Two neighbors were to adjudge its quality, as well as of the deduction which should be made for transportation. This was productive of great fraud:³ so that at the next session tobacco was declared a legal tender only when it was delivered at certain appointed places.⁴ During the Revolution the community was often reduced to the direst extremities for the lack of a

¹ Henning vi, 222.

² *Ibid.*, ix, 96.

³ Smyth's *Travels*, ii, 137.

⁴ Henning ix, 132.

circulating medium; tax receipts were accepted for new taxes, and great confusion ensued. Finally, in 1783, the old system was again put in force,¹ and payments in kind were prohibited.²

At first there was the direst confusion. The market price of tobacco varied from twenty-eight to eighteen shillings a hundredweight, according to the situation of the warehouses.³ Moreover the rigidity of the inspection varied widely, and this also served to give different values to the notes, according to the reputation of the inspectors⁴ through whose hands the tobacco had passed. In fact the whole project of receiving tobacco in lieu of paper money for public dues was adopted merely to prevent the inflationists from demanding more bills of credit. James Madison, as a member of the Assembly in 1786, wrote that "in accepting tobacco for a commutable we perhaps swerved a little from the line on which we set out. I acquiesced as a probable means of obviating more hurtful experiments; there is reason to hope the public treasury will suffer little, if at all. It may possibly gain."⁵ As a matter of fact it really entailed a loss to the State of five to six per cent. on all its tax receipts, although it undoubtedly did avert the danger of more paper money. In 1792 a detailed act revived the old system in its entirety. The gradual retirement of old warrants, certificates of indebtedness and bills of credit, which had formerly sufficed,⁶ rendered these tobacco substitutes necessary. There is little more mention of the system in the laws, however, and it is probable that it was gradually displaced by the money issued by the United States.⁷

¹ Hening xi, 205.

² *Ibid.*, 289.

³ *Ibid.*, xii, 258.

⁴ Warville's *Travels*, 436.

⁵ *Letters*, December 4th and 7th, 1786; as well as Joseph Jones' *Letters*, July 23, 1787.

⁶ Rives, *Madison*, ii, 146.

⁷ La Rochefoucauld's *Travels*, 69.

We have seen that on the whole these notes were a good substitute for hard money in a rural community. They were not liable to the abuses of paper bills; and they never suffered depreciation. Yet, of course, they were open to the dangers incidental to any paper money based upon a commodity whose value rises and falls from year to year. Finally it must always be borne in mind that they were legal tender only in the immediate locality of the warehouse in which the tobacco was deposited. It is unfortunate that the last two writers who have attempted to describe the system should have given the wrong impression in this respect.¹ They were probably intended to act as a circulating medium for a limited time; they circulated only within a circumscribed area; and lastly they were not used until after the middle of the colonial period—all of which features are misrepresented in the only works on the subject. The present value of this study lies in the fact that the recent proposals of the Farmers' Alliance in the United States are almost identical with those which were applied for over half a century in Virginia. Nevertheless the conditions are so radically different to-day, that this study will but serve to show the utter inadequacy of such fiscal systems to the complex transactions of our modern trade and commerce.

Treasury Notes. The Commonwealth of Virginia stands almost alone among the colonies of America in abstaining from the issue of paper bills of credit during the first half of the eighteenth century. We have seen that she had made use of an admirable substitute for coin by means of notes issued against deposits of her staple commodities; and besides this there seems to have been considerable coin in the colony. Thus the demand for a circulating medium was fairly well satisfied during this time of peace.

¹ Henry Phillips, Jr., and Chastellux.

In 1755, however, war with France broke out and the supply of silver which had been coming into New York and Philadelphia from the Spanish colonies was cut off. Exchange on London rose rapidly, and this, with the natural tendency of a people to hoard at such a time, resulted in a complete disappearance of all specie. Moreover the concentration of forces about New York also called for a large amount of cash, which was drawn by bills of exchange.

The Governor issued a call for the Assembly to meet on May 1st, 1755, to consider the situation. He had apparently considered the probable necessity for some issue of paper. Governor Dobbs, of North Carolina, suggested in January that a Loan Office to issue paper notes upon landed security might be possible; to which Governor Dinwiddie replied;—"the method you propose, I think very eligible."¹ When the Assembly met, however, they finally decided to raise twenty thousand pounds by extra taxes. Yet this money was needed at once. To wait until levies had been made in tobacco, and this again could be converted to the use of the Assembly, would have been ruinous. Therefore—"as silver and gold are very scarce, they issue £20,000 in Treasury Notes to be discharg'd and p'd next June."² These notes were to bear interest at five per cent, and were to be a legal tender for all debts except the quit-rents.

In August came the news of Braddock's disastrous defeat, which showed that the struggle was to be more serious than at first had been supposed. A special session of the Assembly was immediately called, and forty thousand pounds more in notes was willingly granted.³ These were to run for four years, and like the first, were fully covered by extra taxes upon lands and polls. Of these the Governor wrote: "our Treasurer's Notes pass for cash, bearing five per cent.

¹ *Letters*, January 17th, 1755. ² *Letters*, June 8th, 1755. ³ *Hening* vi, 528.

interest, w'ch I think is equal to Silver or Gold,—the Subjects have the several Taxes secur'd to them for the s'd Payment—and I took Care y't the time for call'g them in sh'd be short."¹ The success of these substitutes for cash seems now to have over-excited the popular representatives when they reassembled in October. The Governor reported of them that "they endeavor'd to pass an Act for issuing two hundred thousand pounds Paper Money, to be curr't for 8 Years, with't proper Security. I formally gave my consent to vitz, £20000 and £40000 by the Advice of the Council, and on the pres't Emergency of our affairs: but the last attempt—w'd ruin the Credit of the Co'try, encourage extravagance and Idleness among the young People of Estates, who w'd have borrow'd large Sums from the Office."² The craze still spread, however; in April, 1756, seven of the most populous counties sent in a petition praying for a loan office for three hundred thousand pounds, alleging that the scarcity of cash was so great "that families are likely to be ruined by having to sell goods for one-half value."³

The Governor was firm, and refused to assent to any such schemes. He tried to induce Parliament to impose a general land tax on all the colonies, or to issue a special currency to pay for the expenses of the war, but to no avail. After the emission of these first notes the Governor's correspondence assumed a very apologetic tone. He wrote to the Earl of Halifax: "I always was averse to Paper Mo., but I beg leave to assure Y'r L'd'p, y't with't it they w'd grant no supplies;—the absolute necessity and Emergency of our affairs prevail'd on me."⁴ The only issue to which his consent could be obtained during this year was one of £25,000.⁵ An issue of £10,000 was also made to recom-

¹ *Letters*, August 25th, September 6th, 1755, and March 10th, 1756.

² *Letters*, November 15th, 1755.

³ *Journal*, April 6th, 1756.

⁴ June 10th and July 27th, 1756.

⁵ *Hening* vii, 18.

pense the holders of tobacco notes, who suffered by the destruction of two warehouses; these last notes, however, were fully secured by an extra tax upon tobacco exported.¹

In April of 1757 the first two issues of paper were called in, and new notes without interest were substituted for them. The former allowance of interest was declared "to be very burthensome to the country," for it was found that the notes all bore different values according to the periods for which they were to circulate. The new notes were to be of various denominations from five pounds to a shilling, and to be redeemable in 1765. This seems to have been satisfactory to Gov. Dinwiddie, who reported that they had granted "all he desired."² The emission of £80,000 in notes does not seem to have caused any uneasiness, as he affirmed that taxes were laid which would fully secure them all.

The policy of the Commonwealth was now definitely decided upon, and the issues of notes followed each other in regular succession. In March, 1758, thirty-two thousand pounds was emitted; in September, fifty-seven thousand pounds, and in the following February, fifty-two thousand pounds. The Treasurer was empowered to borrow ten thousand pounds in November, 1759, if it could be done. This is the first instance of any attempt to contract loans for an indefinite term of years; and it was apparently not regarded with much confidence, as the treasurer was empowered to issue notes for the amount in case the loan could not be obtained.³ One-half of this loan was merely a completion of the quota allowed by a former act. The real addition to the circulation in 1759, therefore, was but fifty-seven thousand pounds. All these notes were to be redeemed in eight years, and were well secured by extra taxes. The obligations at this time incurred amounted to above four hundred

¹ Hening vii, 48.

² *Letters*, June 14th, 1757.

³ Hening vii, 334.

thousand pounds; but the taxes, though heavy, were confidently believed to be sufficient to uphold the credit of the notes.¹

In May, 1760, it became necessary to emit thirty-two thousand pounds to provide funds for the relief of the garrison at Fort Loudoun.² This extra sum in addition to the regular emission of March of the same year, which amounted to twenty thousand pounds, seems to have cast the first shadow of distrust upon the paper money. The first emissions had come due in the preceding year, and had been promptly paid; no provision had been necessary to punish depreciation of them beyond a nominal penalty of twenty per cent. By 1761, however, the variety of the issues, and their different periods of redemption, began to create suspicion. In November of that year, the Assembly declared it to be "of the greatest importance to preserve the credit of the paper currency of this colony," and proceeded to take effective measures to secure that result. All of the notes then in circulation were made redeemable after October 20th, 1769.

The British government by this time manifested its settled purpose to aid the colonies, and £200,000 in money had already been granted.³ Nevertheless the English factors of the planters, to whom the security of the bills was of great importance, were not satisfied. Already in 1759⁴ they had secured the sending of instructions to the Governor, to enforce suitable provision for foreign creditors; but in spite of it, the notes were persistently declared a legal tender for all debts. The aid from Great Britain now proved sufficient to prevent the necessity of further inflation of the currency. But one more emission of notes was made during the war, when in March, 1762, £30,000 was issued on the security of an ad-

¹ Burnaby's *Travels*.

² Hening vii, 360.

³ *Governor's Address*, November, 1761.

⁴ *Journal*, November, 1759.

ditional poll tax.¹ During this year the British government had remitted over £18,000 in money, which had been used for contingent expenses.² The problem which next confronted the colony was the necessity of providing for the redemption of the notes when they came due.

The Treasury Notes apparently suffered some depreciation by this time. And although it was probably not considerable, it seems to have occasioned some disquietude.³ In opening the session of 1762, the Governor cautioned the Burgesses, saying, "it hath been found that the meddling with the Medium of Trade, whether it be Bullion or Paper, is of a delicate nature, and is often attended with a long train of very distant consequences."⁴ Despite this warning the Assembly protested that they had no other "Means of defraying the Expenses, than by a new Emission of Treasury Notes which may depreciate the Value of the Notes already issued."⁵ Yet the Governor again refused his assent, and no bills were issued.

The British merchants were still unfortunate in their demands for sterling remittances during 1763, and the Governor forcibly demanded consideration of the question.⁶ To this the Burgesses respectfully replied that "they never thought it just to circulate them without making them a Legal Tender, nor could we ever have been induced to emit them on any other terms."⁷ They were persuaded, however, to appoint a committee to investigate the security on which the notes were based. This committee reported that taxes had been laid to produce £424,000 by October, 1769, which was £11,000 in excess of the value of the notes in circulation.⁸

¹ Hening vii, 497.

² *Journal*, November 2nd, 1762.

³ *Massachusetts Historical Collections*, x, 521. ⁴ *Journal*, November 2nd, 1762.

⁵ *Ibid.*, December 2nd, 1762.

⁶ *Ibid.*, May 19th, 1763.

⁷ *Ibid.*

⁸ *Ibid.*, May 24th, 1763.

The Assembly therefore resolved in regard to the treasury notes that "to alter the essential quality of them would be an act of great injustice to possessors." Four days later they followed this by an elaborate defense of the policy of the House, declaring that Virginia was only following the example of the other colonies. "Even then," they continued, "we chose at first to borrow £10,000 at the high interest of six per centum, and never till after that resource failed went into a measure so little relished; there are no warm advocates of paper money among us, further than to preserve the credit of what hath been issued, and prevent the evil consequences of stopping its circulation at this Time. The want of specie was the sole Cause of issuing our Notes; there will require no other Reason to be assigned for our not circulating them upon the footing of Bank or Exchequer notes." After which declaration they resolved not to remove the legal tender quality of the bills. To this argument Governor Dinwiddle had nothing to reply except to "candidly acknowledge the taxes are sufficient, but I think you might have shown this sooner."¹ Despite which assertion, the whole matter was argued again at the following session of the Assembly, with the same results.

A new scheme was now devised in 1765, which was presented from a committee of the whole by Peyton Randolph, who seems to have been the innocent tool of a corrupt cabal of officeholders.² The project was for a Loan Bank, which should issue notes on landed estates, by means of which the Treasury notes were to be removed from circulation. £240,000 sterling was to be borrowed in Europe at five per cent. of which £100,000 was to be secured in bills of exchange.

¹ *Journal*, May 28th, 1763.

² *Ibid.*, May 31st, 1763.

³ A complete description of this plot is given in W. W. Henry's *Life of Patrick Henry*. Vide also *Journal*, May 24th, 1765; *History of Virginia*, by Chas. Campbell.

The remaining £140,000 was to be in sterling money on which Bank Notes were to be issued. In order to provide for the interest and a sinking fund for this debt, which was to be all redeemed in 1779, a heavy tax on the export of tobacco was to be laid. And to reimburse the planters for the extra burden, they were gradually to be repaid from the proceeds of a special poll tax. The final burden was thus shifted upon the heads of the people at large. Fortunately for the colony, we may believe, this scheme came to naught, being opposed alike by the Council, and the Commons under the leadership of Patrick Henry. The death of the Treasurer soon after, revealed the true nature of the project.

All of the extra war taxes were repealed in 1768, as the ordinary levies were deemed sufficient to retire all of the notes then in circulation.¹ Thus ended the first experience of Virginia with paper money. As a whole it is a creditable record. And the judgment of a contemporary governor seems well founded, that "the loss on Virginia paper was honestly acquired by the Government's exerting itself in the common cause. Had it looked on tamely as Maryland did, like an unnatural offspring, it had not been blamed, perhaps commended; Maryland is happy because it has been disobedient and neglect'd her duty."² There was undoubtedly a considerable party in the legislature which favored paper money; and perhaps it was the firmness and wisdom of the Governor which averted the danger. But we must remember the distress of the times, and the heroic exertions of the colony during the war. In view of these facts, the moderation and foresight of her statesmen is in marked contrast with the reckless financiering of some of the other colonies both north and south.

¹ Hening viii, 297.

² Massachusetts Historical Society: *Aspinwall Papers*, vol. x, 521.

The expedient of making compulsory loans by means of the issue of Treasury notes was not abandoned at the close of the war.¹ Two more emissions were made, the first in 1769, to provide funds for the survey of the boundary of the Cherokee lands, as well as to defray the cost of an importation of copper money. These notes were to be redeemed in two years, and although no money seems to have been imported, the notes were duly issued. Yet since the taxes, on which they were based, produced over £11,000, they were promptly redeemed.² A second emission of £30,000 was made in March 1771³ to cover losses of tobacco in the public warehouses; and these were likewise well secured by taxes. Both these issues of notes were so badly counterfeited that the Governor was obliged to call an extra session of the Assembly in 1773.⁴ This body authorized a loan of £36,834, if it could be made, to retire the old notes. In case of failure to obtain this the Governor was empowered to issue "promissory notes" to be redeemed in 1774.⁵ These were not to be legal tender, but were to pass current among "all who may be willing to receive them." In case the taxes did not suffice to sink them all by 1774, new Treasury notes were to be substituted for them. Already the possibility of war was recognized, and the impending conflict doubtless served to depress the value of this paper money. The provisions of the law itself show a lack of confidence among the Burgesses as to the future.

The old issues of notes, although in the estimation of the Assembly fully secured by taxes, had by no means disappeared from circulation. In 1772, three years after the date for their retirement, there was £88,189, or nearly \$500,000 worth of them still in the hands of the people. The

¹ Hening viii, 346.

² *Journal*, March 6th, 1772.

³ Hening viii, 500.

⁴ *Journal*, March 4th, 1773.

⁵ Hening viii, 647.

funds for their redemption exceeded this by over £11,000, but of these estimated assets, £18,000 consisted of arrears of taxes, which were largely bad debts.¹ The defalcation of the late treasurer had given a considerable shock to public confidence; and Indian troubles had imposed an additional debt of £150,000 on the colony.² Moreover, counterfeiting was rife, and no hard money was to be obtained at any price. Under such conditions, it is no wonder that statesmen should contemplate with alarm a great war, which must be fought largely upon credit. The disasters which attended the succeeding issues of paper money belong, however, to a history of the Revolutionary war. It suffices here to know that previous to that time, Virginia had made a record more creditable than almost any of the other colonies.

¹ *Journal*, March 6th, 1772.

² Phillips, *Historical Sketch of American Paper Currency*, i, 200.

CONCLUSION.

In many respects the development of the financial institutions of Virginia is not unlike that of the other American colonies. As in New York, this colony was founded and managed for a time by a private corporation, instituted for purely commercial purposes. And the same development which ensued in the Dutch West India Company took place here; that is to say, the private company soon succumbed to the pressure of permanent public policy. In the second place, Virginia was subject to the same restrictions upon the levy of import duties, which prevented New York and Massachusetts from deriving any considerable revenue from this source. The effect in both cases was to throw the colonies back upon their own resources, such as direct taxes upon property or upon the export of their own products. But in this respect Virginia enjoyed a particular advantage over the other colonies, in that her staple products were by no means entirely consumed in Great Britain. Four-fifths of her tobacco exports merely passed through England, yielding a handsome profit to British merchants on the way. The agricultural products of the middle colonies, on the other hand, were excluded from the mother country absolutely; while the naval stores and lumber of New England were needed for the Royal navy, and could not be heavily taxed without serious detriment to British interests. As a consequence of these conditions of trade, Virginia alone was offered an exceptional opportunity to tax her exports, and thereby to decrease greatly the necessity for direct taxes

upon polls or property without interference from Great Britain.

In all the colonies alike, the general property tax tended toward the middle of the seventeenth century to become, first a resource upon extraordinary occasions, and then a permanent basis of revenue. But this peculiar commercial advantage of the southern colony relieved her from the disagreeable expedient of direct taxation to some extent; so that the poll remained substantially as the sole form of a direct tax for a century and a half. Had her revenues from tobacco failed, as did the slave duty, by reason of the cupidity of the mother country, there would have been no escape from the general property tax which was so common among the other colonies. As it was, the absence of a tax of this nature formed the most distinctive difference which existed between the systems of Virginia and the northern colonies.

It is not difficult to discover another cause for this fundamental difference between the two systems. The general property tax is based upon possessions as the measure of ability to contribute. The poll tax, on the other hand, in a slave-holding community, measures the ability according to the power of production. Lands, buildings and other forms of realty are regarded as merely inert passive conditions favorable to the creation of new wealth, but of no value till the labor of man has developed their latent productive capacities. And this productivity should be directly proportioned to the labor expended upon them. Consequently a tax measured by the amount of this labor will correspond approximately to the total wealth which will be produced by the combined action of land, labor and capital. That is to say, in the system of slavery, labor and capital being united in one person, a tax upon the poll will be at once a tax upon possessions and upon productive ability.¹ An income tax was

¹ *Vide* note to page 21, and page 27.

required in Massachusetts to round out this primitive natural theory of ability, by supplementing the general property tax upon possessions. And when this element disappeared, following the course of history the world over, possessions remained as the sole measure of taxable ability. In Virginia this separation could not be effected, since both elements of production were combined in the slave; and consequently the conception of productivity as opposed to property persisted as the basis of taxation.

Slavery is a primitive natural process of production. The poll tax is a simple expedient, which is peculiar to a less highly developed state of society than that of free contract. The one is a logical result of the other, even although in this case the poll tax was not considered as *nota captivitatis* as it was in Rome. Slavery, therefore, is the ultimate factor which distinguished the colony of Virginia from those of New England. Her people came from the same nation, with the same inherited tendencies, subject to the same regulations of the mother country. But their fiscal systems became radically different, because the outward conditions of climate, soil, and situation were totally unlike. This history attests the truth of the law that the direct immediate environment is after all the most powerful factor in shaping early social institutions. In ethics, politics, and all the relations of intellectual life, this influence is less marked. Taxation and finance, however, are the connecting links between the material and the invisible bonds of society; and their form is dependent upon both the one and the other of its constituent parts.

Perhaps it is the greatest significance of this system of negro slavery, that it shows so clearly the intimate relations which obtain between the political and economic institutions of society. In a slave-holding community social privileges and class distinctions are bound to exist. These tend to the

cultivation of a conservative spirit, which is especially characteristic of the fiscal policies of aristocratic societies, these being dominated by representatives of vested interests. A further consequence of this social differentiation is that friction between the various orders of the people will be engendered; which will be most pronounced in matters of finance and taxation, since on this ground the personal rights of the many and the property rights of the few come into apparent conflict. To study the course of this development is to throw a new light upon many questions which are of great social importance to the student of human institutions. And in this possibility rather than because of any valuable technical results which may be discovered, lies the justification for a study of the finances of primitive societies.

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Volume IV]

[Number 1

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1609-1776

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University Fellow in Economics

COLUMBIA COLLEGE
NEW YORK
1893

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MAX WEST, Ph.D.
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II

THE INHERITANCE TAX

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY

THE UNIVERSITY FACULTY OF POLITICAL SCIENCE
OF COLUMBIA COLLEGE

Volume IV]

[Number 2

THE
INHERITANCE TAX

BY

MAX WEST, Ph.D.

University Fellow in Finance

COLUMBIA COLLEGE

NEW YORK

1893

ss

PREFACE.

The growing importance of the inheritance tax in America is shown by its adoption within a few years by a number of commonwealths, and by the consideration of the question in some form during the past winter by fully a dozen legislatures. As yet there has been no American work on the subject, treating it from other than a legal standpoint. Such being the case, an historical and economic examination of the subject may not be inappropriate at this time.

The theoretical interest attaching to this mode of taxation is no less marked than its practical importance. The theory of the inheritance tax is many-sided and complex. From one point of view, it opens up the whole question of inheritance and bequest, a question which in the limits of this monograph can only be touched upon in the briefest manner possible.

I have used the term inheritance tax to mean any tax on the devolution of property, real or personal, either by will or intestacy. Such taxes have been known at different times and places by a great variety of names, and it seems desirable to adopt a general term which shall be applicable to them all. The English term "death duties" is not inapt, but it has not come into general use in this country, and it might be objected to it that these taxes are not really taxes on death. The American taxes have been known in some cases as legacy and succession taxes, but more generally as collateral inheritance taxes; hence the term inheritance tax corresponds with American usage, as well as with the German word *Erbschaftssteuer*.

I have used a number of other expressions in the popular

rather than the strictly legal sense. Thus, in using the words inheritance and succession as applying to the property received, and the corresponding words heir and successor, I have disregarded the legal distinction between testacy and intestacy, and between realty and personalty. At times I have distinguished between the rights of inheritance and bequest; but I have applied these terms also to both real and personal property.

I desire to acknowledge my indebtedness to the many American and Australasian officials who have given me valuable information and provided me with materials which would otherwise have been inaccessible.

M. W.

Columbia College, May, 1893.

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CHAPTER I.

CONTINENTAL EUROPE.

§ 1. *Rome.* The origin of the inheritance tax has usually been attributed to the Emperor Augustus, who is known to have established such a tax in Rome in the year 6 A. D. Some writers have expressed the belief that a similar tax was imposed by the Voconian law nearly two centuries earlier, but of this there is no conclusive evidence. If such a tax was introduced at that time it was of short duration. Octavius and Antony, at the time of the war against Pompey, attempted to impose a tax on testamentary dispositions of property, but the proposal was indignantly rejected by the Roman people.

It seems probable that the Romans borrowed the idea of the inheritance tax from the Egyptians, with whose financial and administrative systems they were well acquainted by the close of the Republic. There are evidences that Egypt had an inheritance tax at this time, of which the rate was probably not less than a tenth, and from which not even direct heirs were exempt. A papyrus has been found which relates that a certain Hermias was sentenced to pay a heavy penalty for failing to pay the tax on succeeding to his father's house. Another inscription records a sale of property by an old man to his sons at a nominal price, apparently for the purpose of evading the inheritance tax.¹

Concerning the Roman tax our knowledge is much more positive.² Having fixed a definite term for military service,

¹ Lumbroso, *Recherches sur l'économie politique de l'Égypte*, pp. 307 et seq.

² Dio Cassius, *Ῥωμαϊκὴ Ἱστορία*, lib. lv, chap. 25; lib. lvi, chap. 28; lib. lxxvii, chap. 9; Plinius, *Panegyricus*, xxxvii-xl; Perez, *Praelectiones in Duodecim*

Augustus determined to create the *ærarium militare*, a special fund the object of which was probably not the support of the standing army, as has been supposed, but the pensioning of veterans.¹ The Emperor contributed large sums to this fund from his own fortune, and then requested the Senators to submit plans for raising the remainder of the revenue required. He doubtless wished them to realize the difficulty of the problem of taxation before making known his own project; at any rate, he rejected their proposals and introduced a tax of one-twentieth upon inheritances and bequests. Augustus claimed to have found this tax proposed in the papers of Cæsar; but notwithstanding this high authority he was for some time unable to obtain the approval of the Senate. Again he called upon the Senators to devise a better tax, and when they were unable to do so he threatened a general land tax, and even sent out agents to take a census of landed property. This stratagem proved effective; the Roman people, long exempt from direct taxation, had no desire to see the land tax reimposed, and the Senate at length approved the step which the Emperor had taken.

The *vicesima hereditatium*² applied only to Roman citizens. Small amounts were exempt, and allowance was made for funeral expenses, but bequests for public statues and temples were subject to the tax. Among the old citizens of Rome, Augustus exempted the nearest relatives; no such immunity was granted those newly admitted to citizenship, unless they had also obtained rights of cognation. This discrimination

Libros Codicis Justiniani, lib. vi, tit. 33; Cagnat, *Les impôts indirects chez les Romains*, IIIe partie; Clamageran, *Histoire de l'impôt en France*, i, 78; Pauly, *Real-Encyclopædie der classischen Alterthumswissenschaft*, vi, 2579; Gibbon, *Decline and Fall of the Roman Empire*, chap. vi, etc.

¹ Cagnat, *op. cit.*, p. 181.

² More often spelled *hereditatum*; but the form of the genitive given in the text is that found in the inscriptions wherever the word is not abbreviated.—Cagnat, p. 175, note.

was maintained for nearly a century. Nerva recognized that the closest of natural ties were superior to the artificial distinctions of the Roman law; he exempted successions between mother and child, even when no rights of cognation had been granted, and the patrimony of sons over whom the father had acquired *patria potestas*. Trajan completed the reforms of his predecessor by extending the exemption to all sons, whether they had been in the *patria potestas* or not, and to fathers, grandparents and grandchildren, and brothers and sisters. These exemptions were probably no more than the old citizens had already enjoyed; they were intended to put all citizens on an equal footing. To hasten this result, Trajan cancelled all debts to the treasury which were due to the discriminations of the old law. These generous acts of the Emperor were immortalized in a symbolical bas-relief which was discovered at Rome some twenty years ago.

At the time of Hadrian it was found necessary to limit the deduction to be made for funeral expenses, and it was decided that the exemption should not apply to extravagant sums spent for monuments. Marcus Aurelius also introduced some change in the law, but the nature of his amendment is not known.

Very radical changes were wrought by Caracalla. The *vicesima* was a fruitful source of revenue, but Caracalla doubled the rate and abolished the exemptions in favor of near relatives. To increase the revenue still further he extended Roman citizenship, and with it liability to the inheritance tax, to the inhabitants of the whole Empire. This extension of citizenship was permanent, but the old rate and exemptions were restored by Macrinus.

It is impossible to say just when the Roman inheritance tax was repealed. It existed as late as the reign of Gordian III, but it had disappeared before the time of the Code of Justinian.¹ It was probably repealed either by Justinian himself or by Diocletian.

¹ *Codex Justin.*, vi, 33, 3.

The *vicesima hereditarium*, like the other Roman taxes, was at first farmed out to the publicans, but from the time of Hadrian it was collected directly by the *procuratores XX hereditarium* under the supervision of a central bureau at Rome. Care was taken to collect the tax without loss of time; only a few days were allowed to elapse between a death and the opening of the will. Even when the will was contested, Hadrian decreed that the heir named in the will should be put in temporary possession and pay the tax, after which the contest might proceed. The Romans used a simple mortality table or formula in establishing the value of life estates.

§ 2. *The Middle Ages.* In the middle ages the inheritance tax is represented by the *relief* and *heriot* of feudal tenure, together with some other feudal charges of a similar nature. The relief¹ was a payment made to the lord by the heir of a deceased tenant on being admitted to the succession. The theory was that at the tenant's death the fief escheated to the lord, who exacted a contribution in return for permitting the heir to take possession. The payment was either in money or in equipments, and was often arbitrary in amount; but in England it came in time to be fixed at one hundred shillings for a knight's fee, or one-fourth of the supposed value of the land. A socage relief was one year's rent. In knight service the relief was payable only if the heir was of full age, as otherwise the lord was entitled to wardship, but in socage this rule did not apply. In France the *relief* or *rachat* was usually one year's net produce; in many provinces successions in the direct line were exempt. In the case of lands held by base tenure (*la terre roturière*) the corresponding exactions were generally known as *lods et ventes*.² *Primer seisin*, in England, was a

¹ Blackstone, *Commentaries*, ii, 56, 65, 87.

² Vuitry, *Le régime financier de la France*, i, 277, 279; Clamageran, *Histoire de l'impôt en France*, p. 208.

burden somewhat similar to relief, but was due only to the king from his immediate vassals.¹

The heriot,² established in England by the Danes, was an exaction by the lord of the best beast or other chattel of which the tenant died possessed. It probably had its origin in villein tenure, under which all the tenant's chattels belonged lawfully to the lord, and it seems finally to have been absorbed in the relief. *Mortuaries* were a sort of ecclesiastical heriot demanded in many parts of England; the second best chattel was claimed by the clergy, and was usually carried to church when the corpse was taken to be buried. Henry VIII fixed these exactions at from three shillings fourpence to ten shillings, according to the amount of the property. The *farleu*, in Scotland, was a payment of money or goods in lieu of heriot.

Unlike the relief, the heriot was a charge upon the chattels only, and not upon the land. Another distinction sometimes made is that the heriot was considered as being paid by the dead tenant, the relief by his successor.³ This difference between them has been compared to that between the modern English probate duty, paid before the settlement of the estate, and the legacy and succession duties, paid by the heirs after the estate has been distributed.⁴

Just what relation these feudal incidents bear to the *vicesima hereditatium* is not easy to determine. Vuitry believes that the relief was derived from the Roman tax,⁵ but this supposition appears to be unwarranted. The *vicesima* was abolished perhaps as early as the third century, and certainly before the middle of the sixth; there is no evidence that anything corresponding to it existed through the Dark Ages,⁶ and the re-

¹ Blackstone, *Commentaries*, ii, 66.

² *Ibid.*, ii, 97, 422.

³ Kemble, *The Saxons in England*, i, 179.

⁴ Dowell, *History of Taxation and Taxes in England*, iii, 138.

⁵ *Le régime financier de la France*, i, 281.

⁶ Clamageran, *Histoire de l'impôt en France*, i, 168.

lief was a very different kind of exaction, both in theory and in practice. Its connection with the *vicesima* cannot have been very direct, and it seems more probable that it was feudal in its origin as in its nature.

Between the feudal dues and the modern inheritance taxes, on the other hand, a direct connection can be traced. It is true that in England there is no direct historical connection between them, but it seems quite certain that in some parts of the Continent, at least in France and Switzerland, the inheritance tax grew out of the relief.

§ 3. *France.* The feudal exactions on transfers of property, including transfers from the dead to the living, seem to have become established as national taxes in France in the sixteenth century. In 1553 the formality of *insinuation*,¹ first introduced in a limited way in 1539, was extended by Henry II to include testamentary dispositions, sales, and certain other transactions, which were thus made subject to the tax demanded for the registry. In 1703 Louis XIV made all transfers of immovables, either among the living or at death, except those in the direct line, subject to *insinuation* and the accompanying one per cent. tax known as the *centième-denier*. Until the Revolution, testamentary dispositions were subject both to *insinuation* and to the *droit de contrôle*.

The French inheritance tax of to-day forms a part of the system of *enregistrement*,² resting on the law of 22 *frimaire an VII* and its amendments. The original rates, which were less for movables than for immovables, have been modified by placing the two kinds of property on an equal footing, and by levying additional *décimes* analogous to the *sous pour livre* which were formerly added to the *droit de contrôle* and the *centième-denier*. The first *décime* was added to the *droits d'enregistrement* a few months after the passage of the original act, as a war measure; but it has continued in force ever since, and fur-

¹ *Dictionnaire des finances*, ii, 392.

² *Ibid.*, ii, 88.

ther additions have been made from time to time.¹ For many years there have been two and a half *décimes*, or an increase of one-fourth, making the tax actually payable at the following rates:

	Per cent.
The direct line	1.25
Husband and wife	3.75
Brothers and sisters, uncles and aunts, nephews and nieces .	8.125
Great-uncles and great-aunts, grandnephews and grand-nieces, and cousins german.	8.75
Relatives between the fourth and thirteenth degrees. . . .	10.
All other persons.	11.25

Besides this proportional tax, there is a uniform registration tax of seven and one-half francs on testaments (historically the successor of the *insinuation* and *contrôle* to which wills were formerly subject,)² as well as stamp taxes which bear some proportion to the necessary judicial proceedings, and which are especially heavy on small amounts; so that altogether the government often takes as much as fifteen or twenty per cent. of the value of a succession.³

France is an exception to the almost universal rule in that no deduction is allowed for debts.⁴ This has given rise to much hardship and much dissatisfaction. Says Leroy Beaulieu, "Il est impossible de voir un plus monstrueux abus de la force publique." Forced sales are often necessary in order to pay the tax; and the hardship is increased by the taxation of all successions, however small. Still another source of complaint is the mode of levying the tax on usufructuary and owner. The former pays the tax on one-half the value of the property, without regard to his probability of life; and the latter pays at once on the whole value of the property, just as if he acquired immediate possession.

¹ *Annales de l'Assemblée Nationale*, 1871, tome iv, annexe 407.

² *Dictionnaire des finances*, i, 1509.

³ Leroy-Beaulieu, *Science des finances*, i, 515-517.

⁴ *Dictionnaire des finances*, i, 1389; ii, 102, 103.

Repeated attempts have been made to remedy these evils. Commissions have been appointed to consider the deduction of debts, and the matter has frequently been before the legislature; but the reform has been prevented thus far by the fear of loss of revenue, estimated at forty million francs a year. The existing rule has been defended also on the ground that movables sometimes escape the tax by concealment or undervaluation.

In 1880, and again in 1888, unsuccessful attempts were made to divide the tax between usufructuary and owner according to the age of the former. It has also been proposed to limit intestate inheritance to six or eight degrees of relationship, instead of extending it to twelve degrees as at present. This change would not only increase the number of escheats, but would increase the tax for many distant relatives from ten to eleven and one-fourth per cent., the rate which applies where no right of intestate inheritance exists. The subject of progressive rates has also been debated in the Chamber of Deputies.¹

For making declaration of a succession and paying the tax six months are allowed if the decedent died in France, eight months if he died elsewhere in Europe, a year if in America, and two years if in Asia or Africa. The tax is increased one-half if not paid within the prescribed time. If the registration officials suspect fraud in a declaration they may have the valuation determined by the courts; and fraud is punishable by a penalty of one-fourth the value of the property concealed.

The taxes on the transfer of property at death are supplemented by taxes on gifts² and on lands held by corporations.³ The tax on gifts varies not only according to relationship, but according to the occasion of the gift, and in some cases it is less for movables than for immovables. With the *décimes* included, the schedule is as follows:

¹ Eschenbach, *Erbrechtsreform und Erbschaftssteuer*, p. 77.

² *Dictionnaire des finances*, i, 1508; ii, 116.

³ *Ibid.*, ii, 500.

	<i>Movables.</i>	<i>Immovables.</i>
	Per cent.	Per cent.
The direct line—		
By marriage contract	1.5625	3.4375
Partitions	1.25	1.875
Other gifts	3.125	5.
Husband or wife—		
By marriage contract.	1.875	3.75
Otherwise	3.75	5.625
Brothers and sisters, uncles and aunts, nephews and nieces—		
By marriage contract.	5.625	
Otherwise	8.125	
Great-uncles, great-aunts, grandnephews, grand-nieces, cousins german—		
By marriage contract	6.25	
Otherwise	8.75	
Relatives from the fifth to the twelfth degree, inclusive —		
By marriage contract.	6.875	
Otherwise	10.	
Other persons—		
By marriage contract.	7.50	
Otherwise	11.25	

The tax on the immovable property of corporations was introduced in 1849, to complete the system of taxes on the transfer of property. It was argued that corporations rarely alienated their lands, and never died; they should therefore pay a tax equivalent to a year's rental as often as other lands were transferred, or once in twenty years. So the law provided for an annual tax of about one-twentieth of the rental value. For convenience, the amount of the tax was to be found by multiplying the land tax (*contribution foncière*) by .625, which gave a product slightly in excess of five per cent. of the annual rental. The multiplier was afterwards raised to .7, and two and a half *décimes* were added, making it .875. This tax is payable in addition to the land tax on the lands belonging to all legally authorized organizations, including charitable and religious institutions and even the departments and communes. But companies organized for the exclusive

purpose of buying and selling land are not required to pay this tax on lands which are intended to be sold.

In 1890 the *droits d'enregistrement* on successions amounted to 191,171,820 francs, showing an increase of more than 20,000,000 francs over the previous year. The successions were valued at 5,811,191,134 francs, successions in the direct line forming more than two-thirds of the amount. At the time, the increase was ascribed in part to the epidemic of influenza which prevailed during a part of the year; but the receipts for the two succeeding years show a continued increase, being 191,509,500 francs in 1891 and 209,859,500 francs in 1892. The product of the tax on gifts varies but little from year to year; it was 22,308,500 francs in 1891, and 22,551,500 francs in 1892.¹

§ 4. *Holland.* The origin of many of the existing inheritance taxes can be traced to Holland, where a tax on succession to landed property was introduced in 1598. In 1653 this was extended to movables, and in the time of Adam Smith Holland had a highly developed succession tax, graduated according to relationship. We are told² that the rates for collateral relatives were from five to thirty per cent.; direct descendants were exempt, direct ancestors paid five per cent., and successions between husband and wife were subject to a moderate tax of two per cent. There was also a stamp tax upon wills, varying from three stivers to three hundred florins, according to the value of the property transferred. Since that time the Dutch law has been repeatedly amended, and the tax is now much more moderate than when Adam Smith wrote. The rates are as follows:³

	Per cent.
Direct descendants, and husband or wife with living issue . .	1
Direct ancestors	3
Brothers and sisters, and husband or wife without offspring .	4

¹ *Bulletin de statistique et de législation comparée*, November, 1889, pp. 443, 451; February, 1893, p. 132.

² *Wealth of Nations*, bk. v, chap. ii, pt. ii, appendix to articles 1 and 2.

³ *Finanz-Archiv*, v, 1087.

	Per cent.
Uncles and aunts, nephews and nieces, great uncles and great-aunts, grandnephews and grandnieces.	6
More distant relatives and strangers, and all collateral relatives on the excess above their intestate portions	10

All successions of 300 florins or less are exempt. In the case of direct descendants, or a husband or wife with living offspring, successions of 1,000 florins are exempt, and 500 florins are deducted from amounts between 1,000 and 1,500 florins. The tax described above is that which applies in general when the decedent was a resident of Holland; there is an additional tax for certain forms of intangible personalty, and for lands of a foreign decedent situated in Holland the rates are one per cent. for direct heirs and five per cent. in other cases.

§ 5. *Switzerland*.¹ In Switzerland are found the only progressive inheritance taxes on the Continent, as well as the highest proportional taxes in the world. Nearly all the cantons tax inheritances to some extent, and in Bern, Solothurn, Thurgau, Zürich, Uri, and Schaffhausen the rates are progressive. Direct descendants are nearly everywhere exempt, but are taxed in Geneva and one or two of the smaller cantons. The maximum rate varies from the one-half of one per cent. of Zug to the twenty per cent. of Aargau and Schaffhausen; and the little canton of Uri discriminates against intestacy with even higher rates. In several cantons the proceeds are set aside in whole or in part for educational and charitable purposes. Deduction for debts, at least within certain limits, is allowed everywhere except in Zürich. In most cases the inheritance tax is accompanied by a tax on gifts *inter vivos*; and some cantons improve the opportunity afforded by the settlement of estates to collect back taxes in cases where fraud is discovered.

The Helvetic Republic, by a law of 1798, established a national tax on collateral inheritances and gifts as a part of its system of transfer taxes. The tax was graduated from one-

¹ Schanz, *Die Steuern der Schweiz*; Krüger, *Die Erbschaftssteuer*, p. 16.

half of one per cent. for brothers and sisters to five per cent. for distant relatives and strangers. A law of 1800 increased the maximum to six per cent. When Switzerland was again divided into separate states, a number of them retained this tax in a modified form, while others abandoned it altogether. The present century has seen many changes in the laws of the various cantons, tending for the most part to the further development of the tax. The annual product of the inheritance and gift taxes for the whole of Switzerland increased in the thirty years from 1856 to 1886 from 521,000 to 3,055,000 francs, an increase due largely to the enactment of new tax laws and the more extended application of old ones. The inheritance tax seems to be increasing in favor with the Swiss, and Schanz predicts that it will soon be found in all the cantons.

Bern. The law of Bern, the most important canton, may be taken as typical of Swiss inheritance tax legislation. Bern discarded the inheritance tax at the close of the Helvetic Republic, but adopted it again in 1852, and increased the rates in 1864 to one, three, four, five, six, and ten per cent. for collateral relatives. In 1879 the application of the tax was further extended by a popular vote of 22,914 to 19,551, and the following rates were established:

	Per cent.
Husband or wife without issue	1
Parents	1
More distant ancestors	2
Brothers and sisters	2
Uncles and nephews	4
Cousins	6
Children of cousins.	8
More distant relatives and strangers	10

Direct descendants, public institutions, and certain private institutions are exempt; so also is the surviving husband or wife in case there are children. The inheritance of a childless husband or wife is taxed only when it exceeds 5,000 francs;

that of any other taxable person, when it exceeds 1,000 francs. One-tenth of the produce of the tax goes to the commune in which the decedent lived, for school purposes.

Bern has adopted the principle of progression only to a slight extent; on any excess above 50,000 francs the rate is increased one-half. The value of the property is stated in a declaration made by the tax-payer; if it appears too small, a judicial determination may be had.

The law of 1852 taxed all inheritances received in the canton, but both the more recent laws proceed on a different principle, taxing all landed property situated in the canton, and movables left by a decedent who resided in the canton at the time of his death. In the case of gifts *inter vivos* also, movables are taxed when the donor is a resident of the canton. The enactment of the new law in 1879 nearly doubled the amount of the tax, the annual receipts rising from 215,000 to 413,000 francs. The amount is subject to very pronounced fluctuations from year to year; the receipts in 1883, for example, were more than twice as great as in the following year.

Geneva. As long ago as 1680 Geneva imposed an inheritance tax on persons not heirs by the intestate law. In 1789 this was changed to a universal tax of ten per cent. In 1794 the tax was graduated according to the degree of relationship, and progression according to the amount of the inheritance was also introduced; but a progressive tax proved distasteful to the people, and that feature was accordingly discontinued after a two years' trial. During the present century the tax has been several times increased, though it remains proportional. According to the law of 1886, together with the law of 1888 which imposed five *centimes additionels* upon direct heirs, the rates are as follows:

	Per cent.
Direct descendants and ancestors, and husband or wife with issue.	2.1
Brothers and sisters, uncles, nephews, and grandnephews. . . .	5
Cousins german.	10
Other persons.	15

The exemptions include bequests to public and charitable institutions, and inheritances of 3,000 francs in the direct line and of 50 francs in other cases. In case of a life interest, the tax is divided between the usufructuary and the owner according to the age of the former. If the usufructuary is not more than 50 years of age, he pays one-half; if between 50 and 60, one-third; if between 60 and 70, one-fourth; and if over 70, one-eighth; the owner paying the remaining fraction in each case. The taxable property includes all land situated in the canton, by whomsoever inherited, and all property included in the inheritance of a Genevan, wherever situated; but in order to avoid double taxation, the tax paid on foreign real estate in the foreign jurisdiction is deducted from the tax required in Geneva. In proportion to population, the annual yield of the inheritance tax is greater in Geneva than in any other canton, averaging about ten francs for each inhabitant.

Freiburg. The Freiburg law of 1882 contains some curious provisions. The usual effect of the existence or non-existence of children upon the tax paid by the surviving parent is in this case reversed; the husband or wife pays eight per cent. in case the deceased leaves legitimate children, brothers, sisters, nephews, nieces, grandnephews, or grandnieces, otherwise only two per cent.; apparently on the principle that the surviving spouse takes what rightfully belongs to the children or collateral relatives. The same principle is carried out in taxing illegitimate children two per cent. if there are also legitimate children, and exempting them in other cases. If one collateral relative receives by will more than his equal share, he pays an additional one per cent. The rate for servants is four per cent., the rate paid also by cousins. Bequests to persons who are on the poor-list are exempt. Certain public institutions, which formerly paid two per cent., were relieved of the tax by an amendment of the law in 1886.

For number of years Freiburg had a progressive tax, but this was discontinued in 1862, when the tax on successions

and. gifts was consolidated with the registration taxes. The average annual yield of the tax is about 78,000 francs, or two-thirds of a franc for each inhabitant.

Solothurn. In Solothurn, by the law of 1848, the intestate portion of a surviving spouse is taxed two per cent.; parents pay one per cent., brothers and sisters two per cent.; the maximum is eight per cent. Charitable and educational institutions and churches are not entirely exempt, but pay only one per cent. These percentages apply only to amounts between 100 and 5,000 francs. An inheritance of less than 100 francs is taxed at only one-half the rate which would otherwise apply. On the other hand, the rates are increased by one-fourth for each 5,000 francs, so that an inheritance of 20,000 francs pays double the regular percentage; the progression ceases at this point.

Zürich. The Zürich law of 1869 provides for progression on similar principles, but in a less marked degree. The rate is increased by one-tenth for each 10,000 francs until it becomes five-tenths higher than the schedule rate. The rates for amounts less than 10,000 francs are two per cent. for brothers and sisters and adopted children, six per cent. for cousins, nephews, and uncles, eight per cent. for grandparents, and ten per cent. for strangers. No deduction is allowed for debts.

Schaffhausen. Schaffhausen, by the law of 1884, has a collateral inheritance tax increasing from two per cent. for brothers and sisters to ten per cent. for distant relatives and strangers. For amounts between 2,000 and 10,000 francs these rates are increased one-tenth, and there is a further increase of one-tenth for every additional 10,000 francs up to 90,000, all successions above that amount paying double the schedule rate. The first 200 francs in each share are left out of the reckoning. Bequests for public purposes are exempt, as are also bequests to servants of a year's standing if not in excess of 1,000 francs. Half the receipts are set aside each year for special funds of the canton; in 1889, for example, this part went to the poor fund.

Uri. Uri discriminates against intestacy by taxing the intestate successions of distant relatives more heavily than bequests, even to strangers in blood. The intestate rates for collateral relatives increase from one per cent. for brothers and sisters, to twenty-five per cent for distant relatives; but the maximum rate for bequests is five per cent. These rates are increased one-tenth for each 10,000 francs, up to 200,000 francs. Hence in the case of a large amount acquired by intestate succession, the twenty-five per cent. rate for distant relatives would grow to seventy-five per cent. This is the highest rate to be found in any country; but practically it is of very little importance because it applies only in case of intestacy, and well-to-do men without near relatives are not likely to die intestate. The exemption of small amounts is provided for, the amount varying in different cases from 400 to 8,000 francs. Bequests for public, religious, and philanthropic purposes are also exempt; and one-third of the proceeds of the tax goes to the communes for the support of schools and the poor.

Thurgau. Thurgau also discriminates between intestate succession and bequests. A surviving spouse pays two per cent. on property acquired by the intestate law, but five per cent. on any additional amount. In case of intestacy, brothers, sisters, and grandparents pay two per cent., nephews three per cent., uncles and cousins four per cent. Bequests to strangers and distant relatives are taxed six per cent. The tax is progressive, rising by degrees to double the schedule rates.

Aargau. The law of Aargau was amended in 1885 so as to increase the tax on collateral relatives to from one per cent. for brothers and sisters to twenty per cent. for all beyond second cousins. Direct heirs, the surviving spouse, public institutions, and bequests to servants up to 500 francs, are exempt. One-half the product of the tax, except in certain cases, goes to the school and poor funds of the communes. Property situated outside of the canton is taxed only when both decedent and

heir live in the canton. The penalty for fraud is a fine of four times the amount of the tax.

Lucerne. Lucerne has a collateral inheritance tax of which half the proceeds are used for school purposes. The maximum rate is twelve per cent. In general, amounts of 300 francs or less are exempt; when the beneficiary has been a servant of the deceased for a year or more, there is an exemption of 600 francs. All bequests to charitable, educational, and other public institutions are exempt.

Neuchâtel. The Neuchâtel law of 1877 exempts educational, benevolent, and charitable institutions recognized by the state; the husband or wife, if there are children; bequests to servants of the deceased, up to 1,000 francs; and other amounts less than 100 francs. A childless spouse is taxed two per cent., and collateral relatives from three to ten per cent.

Ticino. In Ticino the rates vary from three per cent. for the surviving spouse and brothers and sisters to ten per cent. for strangers. Successions in the direct line are exempt. The rates for relatives by marriage are one per cent. more than for the corresponding blood relations.

Vaud. The law of Vaud, as amended in 1890, fixes the rates at three per cent. for the husband or wife and from two to ten per cent. for collateral relatives. Parents and grandparents are taxed two per cent.

Zug. Zug has a very moderate collateral inheritance tax, varying from one-fifth of one per cent. for brothers and sisters to one-half of one per cent. for distant relatives and the surviving husband or wife. The proceeds are used for school purposes.

Basel Town. Basel Town amended its law in 1887 so as to tax direct heirs, who were formerly exempt. The rates are one per cent. for children, grandchildren, husband or wife; two per cent. for more distant descendants and parents; four per cent. for more distant ancestors and brothers and sisters; six per cent. for uncles and nephews; nine per cent. for cousins,

great-uncles and grandnephews; and twelve per cent. for other persons. The exemptions are bequests for public and benevolent purposes, bequests to persons in the employ of the deceased, inheritances of direct descendants not exceeding 2,000 francs, and those of other persons not exceeding 400 francs.

Basel Land. Basel Land has only a light tax on collateral relatives. Brothers and sisters pay one-half of one per cent., uncles and nephews one per cent., cousins one and one-half per cent., and strangers six per cent.

Other Cantons. St. Gallen, Appenzell, Glarus, Schwyz, Grisons, Valais, Obwald, and Nidwald have no cantonal inheritance tax; but in Nidwald, Glarus, and Grisons there are light taxes levied by the communes. In Nidwald the rates are the same throughout the canton, increasing from one-fifth of one per cent. for direct heirs to one per cent. for strangers. In Glarus there is no graduation according to relationship, but the tax varies in the different communes from one-fifth to one-half of one per cent.

§ 6. *The German Empire.*¹ With one or two unimportant exceptions, the *Erbschaftssteuer* is found in all the states of the German Empire; but it is a much less important source of revenue here than in France and Switzerland. The rates are in no case progressive, but are graduated according to relationship; direct heirs are exempt in nearly all cases, and the maximum rates vary from three to ten per cent. It has often been proposed to replace the taxes of the separate states by a uniform tax for the Empire; and bills for the purpose have been considered in the *Bundesrath*.

Prussia. An inheritance tax was introduced in Prussia in

¹Schanz, "Erbschaftssteuern in Deutschland und einigen anderen Staaten," *Finanz Archiv*, ii, 876; *Annalen des Deutschen Reichs*, 1877, p. 1036; 1879, p. 955; 1886, p. 745; etc.; Bacher, *Die deutsche Erbschafts- und Schenkungssteuern*; Krüger, *Die Erbschaftssteuer*, pp. 56-80; von Scheel, *Erbschaftssteuern und Erbrechtsreform*, p. 81; Eschenbach, *Erbrechtsreform und Erbschaftssteuer*, 2 Abschnitt; *Handwörterbuch der Staatswissenschaften*, iii, 301; Carl, "Die Reform der Erbschaftssteuer in Elsass-Lothringen," *Finanz-Archiv*, x, 241.

1822 as a part of the system of stamp taxes. The law now in force is that of May 19th, 1891,¹ which re-enacted with some technical modifications the law of May 30th, 1873.² The following are exempt: The surviving husband or wife, ascendants and descendants, household servants of the deceased when the bequest does not exceed 900 marks, institutions managed by the state, charitable societies, incorporated charitable institutions, public schools, universities and learned societies, incorporated churches and other religious societies, *etc.*, and all inheritances of less than 150 marks.

The rates are from one to eight per cent., as follows:

	Per cent.
Bequests of annuities to domestic servants	1
Adopted children, brothers and sisters, and their descendants	2
Other relatives up to and including the sixth degree, step-children and their descendants, step parents, children-in-law and parents-in-law, natural children acknowledged by the father.	4
All other persons	8

The annual yield of the tax is about 6,000,000 marks, or about one-fifth of a mark for each inhabitant.

A part of the reform program proposed in November of 1890 by Herr Miquel, the Prussian finance minister, consisted in the extension of the inheritance tax to direct heirs.³ On amounts of more than 1,000 marks, excluding house furniture, clothing, *etc.*, the tax was to be one per cent. for parents, and one-half of one per cent. for direct descendants and for the widow in certain cases. It was argued that this would furnish a check upon the income assessments, and would produce the effect of a higher tax on funded than on personal or professional income, at the same time increasing the revenue by

¹ Gesetz-Sammlung, 1891, no. 11; *Finanz-Archiv*, viii, 948.

² Gesetz-Sammlung, 1873, no. 8144.

³ Entwurf vom 3. November 1890, *Finanz-Archiv*, vii, 709.

3,500,000 or 4,000,000 marks. But this proposal excited more opposition than any other of the proposed tax reforms,¹ and was defeated. It was thought to be an inopportune time for the change, and the exemption was considered too small.²

The Other German States. In Bavaria, Württemberg, Hesse, Saxony, and several of the smaller states, the maximum rate is eight per cent. as in Prussia; in Hamburg and Lübeck the maximum is ten per cent.; Schwarzburg-Sondershausen has a uniform rate of three per cent. The surviving spouse is unconditionally exempt in most of the states, but is taxed one and two-thirds per cent. in Baden, and in a few of the smaller states the exemption is made to depend upon the existence of offspring. Legitimate children are everywhere exempt except in Alsace-Lorraine. Illegitimate children are sometimes exempt if acknowledged by the father; in all cases they are exempt on what they receive from the mother. Adopted children are exempt in a few states, but are subject to a moderate tax in the greater number. Brothers and sisters are everywhere subject to the tax. Bavaria, Württemberg, and a few other states tax parents and grandparents, the latter at a higher rate. Bequests to servants are encouraged by favorable provisions in a number of states, and bequests to religious and benevolent societies are commonly exempt. Schaumburg-Lippe at one time had a slightly progressive inheritance tax, but the maximum was only three per cent.

In most of the states gifts *inter vivos* are taxed. Bavaria has the beginning of a tax on corporations as a substitute for the inheritance tax; the real estate of juristic persons, except charitable and religious institutions, is subject to a tax of one per cent. once in twenty years.

Everywhere in Germany inheritances of landed property are taxed only in the state in which the property is situated.

¹ *The Nation*, lii, 255 (March 26th, 1891).

² *Handwörterbuch der Staatswissenschaften*, iii, 302.

Movables are taxed by the various states according to the location of the property and the citizenship and domicile of the decedent and the heir.¹ Double taxation is avoided by a system of reciprocity between the different states. For example, Bavaria refrains from taxing movables situated in Bavaria, left by a decedent who was neither a citizen nor a resident of Bavaria to a resident of another state which grants the same favor in return.

§ 7. *Austria.*² A ten per cent. collateral inheritance tax was introduced in Austria in 1759, for the purpose of paying the public debt. The tax was repeatedly modified during the first century of its existence. The present law, which has been in force since 1850, taxes all successions and gifts; the rate for landed property is in every case one and one-half per cent. more than for movables, as shown below:

	<i>Movables.</i>	<i>Immovables.</i>
	Per cent.	Per cent.
Direct line, husband or wife.	1	2½
Servants, on bequests not exceeding 500 guilders.	1	2½
Collateral relatives not more distant than cousins	4	5½
All other persons	8	9½

Sons-in-law, daughters-in-law, and step-children are regarded as direct heirs. All debts are deducted as far as possible from the value of the movables, which pay the lower rates.

Austria has a well-developed system of mortmain taxes in lieu of the inheritance tax, levied once in ten years on all corporate property. For joint-stock companies the rate is one and one-half per cent.; for corporations in which the members hold no shares, such as churches, charitable institutions, and

¹ *Finanz-Archiv*, vii, 316; ix, 420.

² Krüger, *Die Erbschaftssteuer*, p. 25; Bergius, *Finanzwissenschaft*, p. 419; von Scheel, *Erbschaftssteuern*, p. 84.

communes, the rate is three per cent. Associations which are to continue not longer than fifteen years, or only during the lives of the incorporators, are not subject to the tax. When there is doubt as to the value of the property, the average income of the corporation for the ten years is taken as the basis of capitalization and multiplied by twenty; so that the tax of one and one-half per cent. of the property paid once in ten years is equal to an annual income tax of three per cent.

§ 8. *Italy*.¹ During the past few decades the Italian inheritance tax has been several times increased. Since 1888 it has been levied at the following rates:

	Per cent.
Lineal descendants and ancestors	1.36
Husband or wife	3.9
Brothers and sisters	6.5
Uncles and nephews, great-uncles and grandnephews.	7.8
Cousins german.	10.4
Other relatives up to the tenth degree	11.7
All other persons	13.

There is no exemption in favor of bequests to charitable institutions, but they are taxed at the rate which applies to brothers and sisters. Amounts left to adopted children are taxed at one-half the rate which would apply if the adoption had not taken place. Where property changes hands through death twice within four months the tax on the succession which pays the lower rate is remitted. The tax yields about 37,000,000 lire annually.² It is supplemented by an annual tax on corporations; amounting to six-tenths of one per cent. in the case of charitable institutions under state inspection, and four and eight-tenths per cent. in all other cases.

¹ *Journal of the Royal Statistical Society*, lii, 135; Krüger, *Die Erbschaftssteuer*, p. 29.

² *Statesman's Year-Book*, 1892, 1893, p. 695.

§ 9. *Spain, and Spanish America.*¹ In Spain any discrimination in favor of the eldest son is subject to a tax of twelve per cent. In other cases the rates are as follows :

	Per cent.
Legitimate ancestors and descendants, and movables assigned by law to husband or wife	1
Natural ancestors and descendants	2
Husband or wife	3
Collateral relatives of the second degree.	4
“ “ “ third “	5
“ “ “ fourth “	6
“ “ “ fifth “	7
“ “ from the sixth to the tenth degree	8
“ “ beyond the tenth degree, on movables	9
Strangers acquiring landed property	10

Careful provision is made for the deduction of clearly proven debts. Charges which actually diminish the property, such as quit-rents, annuities chargeable on the property, *etc.*, are deducted; but mortgages given as security for loans are excluded from this category.

Chile. In order to avoid repeated payments of the inheritance tax resulting from frequent transfers of the same property, the Chilean law of 1878 provides that the tax shall be remitted in the case of property which during a period of ten years has changed hands twice through death, and on which the tax has been once paid. Amounts not exceeding 2,000 pesos in value are always exempt; and exemptions are also made in favor of the municipalities, free educational institutions, religious organizations, and institutions maintained or subsidized by the government. The rates vary from one per cent. for direct descendants to eight per cent. for strangers in blood. Portions reserved in favor of the surviving husband or wife are subject to a tax of one per cent.; other successions between husband and wife are taxed three per cent.

¹ *Journal of the Royal Statistical Society*, lii, 124, 135, 141.

Guatemala. The Fiscal Code of 1881 provides for a tax on successions and gifts to be levied at the following rates:

	Per cent.
Legitimate descendants.	1
Lineal ancestors, and acknowledged natural children	2
Husband or wife, brothers and sisters, and adopted children.	3
Other collateral relatives, and the adopted father	5
Relations by marriage	8
Strangers	10

Exemptions are made in favor of successions not exceeding 1,000 pesos, and bequests to municipalities and to institutions subsidized by the state.

§ 10. *Russia.*¹ The Russian government followed the example of the other European countries by introducing a tax on inheritances and gifts in 1882. The rates are as follows:

	Per cent.
Husband or wife, direct descendants and ancestors, adopted children, sons-in-law and daughters-in-law.	1
Step-children, and brothers and sisters and their orphan children	4
Other relatives of the third and fourth degrees	6
Other persons	8

No tax is required on amounts of 1,000 rubles or less, on bequests to benevolent, religious, or educational institutions, on the peasant allotments, or on peasants' movables from which no income is derived. A usufructuary pays the tax on one-half the value of the property. Declarations stating the value of the property transferred are required to be made by the heirs or executors, and may be reviewed by the courts. Deductions are made for debts and funeral expenses. If the tax is not paid within one month after the amount due is ascertained, a penalty of one per cent. per month is added; but by applying for an extension of time and paying six per cent.

¹ *Finanz-Archiv*, v, 1096; Krüger, *Die Erbschaftssteuer*, p. 30.

interest, the heir may postpone the payment of the tax on movables for one year, and pay the tax on landed property in three annual installments. The tax applies to all property situated in Russia, except when the decedent is a subject of a foreign state which does not tax the property of Russian subjects in like cases. Although the tax is made applicable to all gratuitous transfers of which there is documentary evidence, it has been extensively evaded by death-bed gifts.¹ The proceeds are about 4,000,000 rubles a year.²

§ 11. *Other European Countries.* Belgium³ has a rather complicated system of inheritance taxes. There is one scale for property of a Belgian decedent, and another for landed property in Belgium inherited from a foreigner. The maximum rate is 13.8 per cent. A usufruct is taxed at one-half the value of the property. Deduction for debts is allowed within certain well-defined limits. The annual proceeds are about 20,000,000 francs.⁴

In Monaco⁵ the rates for succession to landed property range from one to six per cent.; for movables the rates are only one-half as high. Successions in the direct line are exempt only when not determined by will or deed. No provision is made for the deduction of debts.

Roumania,⁶ by the law of 1886, exempts the husband or wife and direct heirs, as well as legacies and gifts to certain public institutions. The rates for collateral relatives are from three to nine per cent.

¹ Mr. Maurice Jacobson, formerly a student in Russia, and at present a fellow-student in the Columbia School of Political Science, tells me of a case in which a Russian millionaire evaded the tax by giving away his property to his sons a few hours before his death.

² *Almanach de Gotha*, 1892, p. 1106.

³ Krüger, *Die Erbschaftssteuer*, p. 13; *Journal of the Royal Statistical Society*, lii, 122, 134.

⁴ *Statesman's Year-Book*, 1891, 377; 1892, 1893, p. 383.

⁵ *Journal of the Royal Statistical Society*, lii, 137.

⁶ *Ibid.*, 136.

In Luxemburg¹ the tax rises to ten per cent., and in the case of bequests to collateral relatives any excess over the intestate portion is taxed at the maximum rate. Usufructuaries pay one-half the regular rates.

Denmark² has an inheritance tax of one per cent. for the husband or wife, parents, and children of the decedent, four per cent. for the brothers and sisters and their children, and seven per cent. for all other persons.

Inheritance taxes are levied also in Sweden,³ Norway,³ Portugal,⁴ and Greece.⁴

¹ *Journal of the Royal Statistical Society*, lii, 136.

² *Finanz-Archiv*, ii, 883.

³ *Ibid.*, vii, 329.

⁴ *Ibid.*, vii, 328.

CHAPTER II.

THE BRITISH EMPIRE.

§ 1. *The United Kingdom*.¹ "There is no art which one government sooner learns of another," said Adam Smith, "than that of draining money from the pockets of the people." England having borrowed from Holland the idea of stamp taxes, the original Stamp Act of 1694² contained a provision for a tax of five shillings on probates and letters of administration in the case of estates of more than £20. Four years later³ this tax was doubled; and in 1779⁴ it was graduated from ten to fifty shillings, according to the value of the estate. The publication of *The Wealth of Nations* had by this time made the Dutch inheritance taxes better known, and the result was an extension of that mode of taxation in England. In 1780⁵ Lord North introduced a tax on receipts for legacies and distributive shares, graduated from 2s. 6d. for amounts not exceeding £20 to 20s. for amounts of £100 or more. A few years later⁶ the rates were increased, and something approximating an *ad valorem* scale introduced; and discriminations were made in favor of the widow, children, and grandchildren. But this tax, naturally enough, was evaded by omitting to make use of

¹ The literature treating of the British death duties is so voluminous and so accessible to American readers that anything more than a brief sketch of the system would be superfluous here. See Buxton and Barnes, *Handbook to the Death Duties*; Trevor, *Taxes on Succession*; Griffith, *Digest of the Stamp Duties*; Elliott, "Death Duties," in Palgrave's *Dictionary of Political Economy*; Dowell, *History of Taxation and Taxes in England*; etc.

² 5 and 6 Will. and Mary, chap. 21.

³ 9 and 10 Will. III, chap. 25.

⁴ 19 Geo. III, chap. 66.

⁵ 20 Geo. III, chap. 28.

⁶ 23 Geo. III, chap. 58; 29 Geo. III, chap. 5.

receipts, until in 1796¹ it was made a tax on the transfer itself, and executors and administrators were made liable for its payment. The receipts were still stamped to show the payment of the duty, but the giving and taking of receipts was now made compulsory. At the same time the tax was graduated according to relationship from two per cent. for brothers and sisters to six per cent. for distant relatives.

The English tax on probates and letters of administration was extended to Scotland in 1804, but with administrative modifications made necessary by the law of that country. A similar tax had been imposed by the Irish parliament in 1774, but until 1842 it was lower in Ireland than in Great Britain. The taxes described below are now the same in all parts of the United Kingdom.

The British legislation of two centuries has resulted in a complicated system of five distinct but allied taxes, known collectively as the "death duties," a name said to have been given them by Mr. Gladstone,² and separately as the *probate*, *account*, *legacy*, *succession*, and *estate* duties. The first three apply to personal property alone; the succession duty applies to realty and certain kinds of personal property, such as leaseholds and settled personalty, which are not subject to the legacy duty; and the estate duty applies to both real and personal property.

The *probate duty*³ is the name commonly applied to the stamp tax paid in England and Ireland on the affidavit required to be delivered before the issue of probate or letters of administration, and in Scotland on the inventory exhibited at the same stage of the proceedings. It is slightly progressive, varying from one and one-half per cent. in some cases to rather more than three per cent. That is, the duty on personal estates the net value of which is above £100 but not above £500 is £1 for every £50 or fraction thereof; on es-

¹ 36 Geo. III, chap. 52.

² Wilson, *The National Budget*, p. 117.

³ 44 Vict., chap. 12.

tates between £500 and £1,000, £1 5s. for every £50 or fraction thereof; and on estates above £1,000, £3 for every £100 or fraction thereof; but when the gross value of the estate does not exceed £300, the duty is only 30s.

The *account duty*¹ is merely supplementary to the probate duty, and is now included in the official definition of the latter.² It is levied at the same rates, and its purpose is to prevent evasion of the probate duty by gifts *causâ mortis*, joint investments, *etc.* It applies to all gifts of personal property unless made in good faith twelve months before the death of the donor.

The *legacy duty*³ is payable out of the individual shares of personal property when they come into the possession of the heir. It is graduated as follows :

	Per cent.
Lineal issue and ancestors.	1
Brothers and sisters and their descendants	3
Uncles and aunts " "	5
Great-uncles and great-aunts " "	6
Other persons.	10

When the entire personal estate does not exceed £300, no legacy duty is payable. Widows are exempt, and direct descendants and ancestors are practically exempted by a provision⁴ which relieves them from liability to legacy or succession duty on property which has already paid the probate duty. There are also exemptions in favor of learned societies, Irish charities, and the Royal Family.

The *succession duty*, introduced by Mr. Gladstone in 1853,⁵ is to realty, leaseholds, and settled personalty what the legacy duty is to other property. In the case of property which is subject also to the probate duty, such as leaseholds, the percentages correspond exactly with those of the legacy duty; for other property they have been increased⁶ to 1½, 4½, 6½,

¹ 44 Vict., chap. 12.

² 51 and 52 Vict., chap. 41, § 21; chap. 60, § 5.

³ 55 Geo. III, chap. 184; 44 Vict., chap. 12.

⁴ 44 Vict., chap. 12, § 41.

⁵ 16 and 17 Vict., chap. 51.

⁶ 51 Vict., chap. 8, pt. iv.

7½ and 11½ per cent. But the heir to real estate pays the tax not on the actual value of the property, but on the capitalized value of an annuity equal to the net annual value of the property. The tax may be paid either in eight semi-annual installments, beginning a year after the succession occurs, or in four annual installments, one-eighth in each of the first three, and five-eighths in the fourth. The exemptions are somewhat less generous than in the case of the legacy duty.

The *estate duty* was introduced by Mr. Goschen in 1889,¹ and expires by limitation in 1896. It is an additional tax on personal estates exceeding £10,000, and on individual successions of realty exceeding £10,000 in value; so that its effect is to increase the progressive character of the death duties as a whole. It is levied at the rate of £1 for every £100 or fraction thereof. In the case of real estate it is paid in installments like the succession duty; the taxable value of the realty is nominally the capital value, but in reality is ascertained by reference to the annual value.

It will be observed that the death duties fall very unequally on realty and personalty. The probate duty applies to personal property alone; and the duties on personalty are always paid in a lump sum and on the full capital value, while those on realty are paid in installments extending over several years, and on fictitious valuations calculated from the annual value. In the case of land held for speculative purposes, which produces no revenue, there is absolutely no tax. The landowners have always resisted any extension of the death duties to real estate, claiming that they pay more than their share of other taxes.²

The probate duty is the most important of the death duties, yielding about one-half of the total product. One-half the product of the probate and account duties is now transferred

¹ 52 Vict., chap. 7.

² For example, see Baxter, *Taxation of the United Kingdom*, p. 100.

to the local taxation account for the relief of local rates. The annual revenue from the death duties has increased to more than £10,000,000. The net receipts for the last three years are shown below :¹

	1889-90.	1890-91.	1891-92.
Probate and account duties ²	£4,528,802	£4,827,337	£5,622,374
Legacy duty	2,723,886	2,626,016	2,828,162
Succession duty	1,065,170	1,209,227	1,200,347
Estate duty on personalty.	780,242	1,125,620	1,304,080
Estate duty on realty	9,776	68,758	98,640
Total	£9,107,876	£9,856,958	£11,053,603

Besides these five duties payable at the death of natural persons, there is an annual tax of five per cent. on the income of corporations, except churches and charities. But incomes from the donations and contributions of living persons, and from property acquired by the corporation within the previous thirty years, or used for trading purposes, are exempt. The product for 1890-91 was £41,354.³

A municipal death duty for London may be regarded as a possibility of the future. The program of the London Liberal and Radical Union, which was emphatically indorsed at the municipal election of 1892, contained a proposition for such a local tax, among other projects for the relief of the rate-payers. The death in the same year of Mr. W. H. Smith, a rich Englishman who bequeathed none of his wealth for public purposes, increased the project in popular favor,⁴ in much the same way that the death of Jay Gould has brought the inheritance tax to the public notice in America.

§ 2. *Australasia.* The financial and social importance of the inheritance tax is nowhere greater than in Australasia. It is

¹ *Finance Accounts*, 1889-90, p. 17; 1890-91, p. 19; *Report of the Commissioners of Inland Revenue*, 1891, p. 19; *Statesman's Year-Book*, 1893, p. 43.

² Including the part transferred to the local taxation account.

³ *Finance Accounts*, 1890-91, p. 19.

⁴ *The Review of Reviews* (American edition), v, 305, 397 (April and May, 1892.)

among the chief sources of revenue; and in some cases heavy taxes have been imposed not from financial considerations alone, but also for the purpose of breaking up large estates. The rates are progressive in nearly all the colonies, rising to ten per cent. in Victoria, thirteen per cent. in New Zealand, and twenty per cent. in Queensland. Sir Charles Dilke tells us¹ that the institution of private property has not been weakened, nor capital driven from the colonies, by these progressive taxes. They have given very general satisfaction, and in several instances the rates have been increased after the tax has been in operation for a time.

The graduation according to relationship is much less elaborate than in the European countries; usually not more than two or three classes of relatives are distinguished. None of the laws exempt direct heirs; they are usually taxed at one-half the rates which apply to more distant relatives.

Victoria. The Victorian parliament first imposed "duties on the estates of deceased persons" in 1870,² in order to meet the financial needs of the time. The rates varied from one per cent. for estates of £1,000 and less to five per cent. for estates of more than £20,000. In 1876³ the large estates were made subject to further progression, with a maximum of ten per cent. for estates of more than £100,000; and in October, 1892,⁴ a new and very elaborate schedule was adopted, leaving the percentages approximately the same as before, but dividing estates according to size into thirty-seven classes instead of nine. For estates exceeding £1,000 and not exceeding £5,000 the rate is two per cent., and those between £5,000 and £6,000 are taxed three per cent.; from this point the rate is increased by increments of one-fifth of one per cent. until it reaches ten per cent. in the case of estates of more than £100,000.

¹ *Problems of Greater Britain*, pt. vi, chap. i.

² 34 Vict., no. 388.

³ 39 Vict., no. 523.

⁴ 56 Vict., no. 1261.

But the decedent's widow, children, and grandchildren pay only one-half these rates when the estate does not exceed £50,000; the new law removes the discrimination in their favor in the case of the larger estates, and it is estimated that this change will increase the revenue by £60,000. There is no exemption in favor of bequests for charitable or educational purposes.

An amendment of 1889¹ exempts estates of £1,000. and less, and also provides that £1,000 shall be deducted from the value of all estates of less than £5,000; but in all other cases duty is payable on the full amount. This provision, together with the application of the percentage for each class to the whole amount, instead of only to the excess above the next lower class, results in a strange irregularity in the progression—an irregularity which is to be found in many other progressive tax schedules, but which is none the less anomalous on that account. For example, an estate valued at £4,990 pays two per cent. on £3,990, or £79 16s.; while an estate valued at £5,010 pays three per cent. on £5,010, or £150 6s. In other words, a difference of twenty pounds in the valuation of the estate makes a difference of more than seventy pounds in the amount of the duty, leaving the heir fifty pounds poorer than he would be if the estate had been twenty pounds less. In theory, the rate does not jump at once from the slightly less than one and three-fifths per cent. of the first case to the three per cent. of the second, for by the words of the act an estate valued at just £5,000 would pay two per cent. on the full amount; yet there is at this point a temptation to undervaluation which in the case of ordinary mortals must be quite irresistible. Attention was called to the anomaly when the bill was before the Legislative Council.² The object of the amendment was to give relief to small estates, which had formerly

¹ 53 Vict., no. 1053; 54 Vict., no. 1060, § 100.

² *Parliamentary Debates*, 1889, p. 2059.

paid duties amounting in some cases to such sums as one shilling, and even one penny;¹ and in the form in which it was finally passed it was the result of a compromise. The Government had proposed an exemption of £500, a like amount to be deducted from all estates; but the exemption was raised to £1,000 in the Assembly, and it was largely to counterbalance the consequent loss of revenue that the deduction was made inapplicable to the larger estates.² This result might have been accomplished much more equitably, and with fewer words, by simply increasing the percentages for all classes in the schedule except the first, letting the deduction apply to all estates.

Every executor or administrator of a dutiable estate is required by law to file in the office of the Master-in-Equity of the Supreme Court an itemized account of the decedent's property and debts. The penalty prescribed for false statement is imprisonment for from one to three years, and a fine not to exceed £100. In case the Master is dissatisfied with the valuation, he may appoint a valuator to fix the value of the property, and may then agree with the personal representative as to the final valuation, or may compel the attendance of witnesses and take evidence under oath as to the value of the estate. If the personal representative is dissatisfied with the final valuation of the Master-in-Equity he may appeal to the Supreme Court. The duty must be paid before the issue of probate or letters of administration. It is deemed a debt of the decedent to Her Majesty, and is to be paid out of the personal estate, after the payment of testamentary and funeral expenses, in priority to all other debts. If the personal property is insufficient, the real estate is to be used to satisfy the duty. A *donatio causâ mortis*, or any conveyance made to take effect upon the death of the grantor, or with intent to evade the duty, is to be taxed as a part of the grantor's estate at his

¹ *Parliamentary Debates*, 1889, p. 1654.

² *Ibid.*, p. 1657.

death. Settlements containing trusts or dispositions to take effect after the settlor's death are also taxable; and settlements and deeds of gift have recently been made liable in addition to a progressive stamp tax with a maximum rate of two and one-half per cent.¹

The revenue from this tax shows some very noticeable fluctuations. It rose from £151,861 in 1887-88 and £236,449 in the following year to £400,150 in 1889-90, and fell to £184,886 in 1890-91. But on the whole there has been a marked increase during the last fifteen years.² Averaging the returns for the three years 1888-91, this tax yields eight per cent. of the total revenue from taxation, including customs. With the exception of the customs duties it is the largest item of taxation, amounting to about five shillings for every inhabitant of the colony.

New South Wales. The New South Wales Stamp Duties Act of 1880³ imposed a one per cent. probate duty, which was replaced six years later⁴ by a progressive tax calculated according to the following schedule:

	Per cent.
Where the value of the estate is under £5,000.	1
Where the value is £5,000 and under 12,500.	2
“ “ 12,500 “ 25,000.	3
“ “ 25,000 “ 50,000.	4
“ “ 50,000 or more	5

There is no exemption or reduced rate for direct heirs, or for charitable bequests. The duty must be paid or security given before the issue of probate or letters of administration. A penalty of £100 and ten per cent. of the duty payable is prescribed for the administration of an estate without obtaining probate or letters of administration; but no penalty is incurred if the estate does not exceed £200.

Gifts *causâ mortis*, conveyances made to take effect upon the death of the grantor or to evade the duty, and settlements

¹ 56 Vict., no. 1274.

² *Victorian Year-Book*, 1890-91, p. 84.

³ 44 Vict., no. 3.

⁴ 50 Vict., no. 10.

taking effect after the death of the settlor, are liable to the duty.

In 1890 the duty amounted to £240,986, of which estates of more than £50,000 paid £183,480. The amount for that year was considerably greater than usual, owing to the death of a number of wealthy colonists, one of whom left property valued at more than one and a quarter million pounds. For 1888 and 1889 the tax yielded £135,488 and £136,886 respectively, and rather more than half of the whole amount came from the estates which paid five per cent.¹

Queensland. As long ago as 1866² Queensland had a stamp duty on probates of wills and letters of administration, approximating one per cent. where there was a will, and one and one-half per cent. in case of intestacy. This duty was replaced in 1886³ by a progressive succession tax ranging from two per cent. on estates between £100 and £1,000 in value to five per cent. on estates of more than £20,000, with half rates for the widow and children.

By the new law of October 4th, 1892,⁴ the succession duty varies from one per cent. on small estates passing to direct heirs to twenty per cent. on such portions of large estates as are bequeathed to others than relatives of the deceased. The rates are shown in the following table:

Where the estate amounts to—

	Per cent.
£ 200 and less than £ 1,000	2
1,000 " " " 2,500	3
2,500 " " " 5,000	4
5,000 " " " 10,000	6
10,000 " " " 20,000	8
20,000 or more	10

For the wife, husband, or lineal issue, one-half the above rates; for strangers in blood, double the above rates.

¹ *Wealth and Progress of New South Wales*, 1890-91, pp. 636, 637.

² 30 Vict., no. 14.

³ 50 Vict., no. 12.

⁴ 56 Vict., no. 13.

Where the husband or wife of the successor would be chargeable with a lower rate than the successor, the lower rate applies. Estates of less than £200 and single successions of less than £20 are exempt. It is expressly provided that trusts for charitable or public purposes are chargeable at the rates which apply to strangers in blood.

Besides the succession duty there is a probate duty varying in amount from ten shillings on estates between £50 and £100 to five pounds on estates of more than £500, with double rates in case of intestacy. This duty must be paid before the issue of probate or letters of administration.

The succession duty on personalty is payable when the heir comes into possession of the property; but in the case of real estate the duty is payable in four equal semi annual instalments. The duty on an annuity or life estate is estimated according to the present value of the annuity, and paid in four annual installments; but that on a legacy directed to be used for the purchase of an annuity is to be paid at once. Remaindermen are not liable to duty until they come into possession of the property; but if they desire, the duty may be commuted and paid in advance. In the case of plate, furniture, and other property not yielding income, there is no duty on any interest which does not carry with it the power to sell the property. The duty remains a first charge on real estate for six years, or for twelve years if no notice of the succession is given or first instalment paid, and on personalty as long as the property remains in the hands of the successor. When a successor applies to be registered as the owner of land, unless he produces a certificate showing that the duty has been paid, the Registrar of Titles makes an entry "Succession duty not paid," which remains on the register until the duty is paid or ceases to become a charge on the land.

The regulations¹ made under the new act prescribe that

¹ *Supplement to the Queensland Government Gazette*, Dec. 3rd, 1892.

every application made to the courts for probate or letters of administration must be accompanied by an affidavit setting forth the value of the estate. The successors or their representatives are also required to give notice to the Commissioners of Stamps, and to render accounts of the property to which they are entitled, accompanied by all necessary vouchers and other documents affecting the property. The succession duty is then assessed by the Commissioners, who have power either to revalue the property themselves or to appoint disinterested valuers to do so. The tax-payer, if dissatisfied with the assessment, has an appeal to the courts. The act prescribes a penalty of five per cent. a month for neglecting to give notice of a succession when the tax becomes payable, or neglecting to pay the duty within twenty-one days after it has been finally ascertained. Any person guilty of false declaration is liable to fine and imprisonment.

New Zealand. The New Zealand Deceased Persons' Estates Duties Act of 1881¹ imposed a progressive tax according to the following schedule:

- On estates not exceeding £100, no duty.
- On estates exceeding £100 and not exceeding £1,000, 2 per cent.
- On any estate not exceeding £5,000 :
 - 2 per cent. on the first £1,000,
 - 3 per cent. on the remainder.
- On every additional £5,000 or any part thereof up to £20,000 :
 - 4 per cent. on the first additional £5,000 or part thereof,
 - 5 per cent. on the second additional £5,000 or part thereof,
 - 6 per cent. on the third additional £5,000 or part thereof.
- On every additional £10,000 or any part thereof up to £50,000 :
 - 7 per cent. on the first additional £10,000 or part thereof,
 - 8 per cent. on the second additional £10,000 or part thereof,
 - 9 per cent. on the third additional £10,000 or part thereof.
- On any excess over £50,000, 10 per cent.

Although it looks complicated, this schedule was really quite simple; and in the uniformity of the progression it might

¹ 1881, no. 41.

well serve as a model for other scales of progressive taxation. It might be more simply written as follows:

On estates exceeding £100:

- 2 per cent. on the first £1,000.
- 3 per cent. on the next £4,000.
- 4 per cent. on the second £5,000.
- 5 per cent. on the third £5,000.
- 6 per cent. on the fourth £5,000.
- 7 per cent. on the third £10,000.
- 8 per cent. on the fourth £10,000.
- 9 per cent. on the fifth £10,000.
- 10 per cent. on the excess over £50,000.

In 1885¹ this schedule was replaced by the one given below, making the tax heavier in most cases, with an additional rate for strangers in blood:

On amounts not exceeding £100, no duty.

On amounts exceeding £100 and not exceeding £1,000:

On the first £100, no duty,

On the remainder, 2½ per cent.

On amounts exceeding £1,000 and not exceeding £5,000, 3½ per cent.

On amounts exceeding £5,000, up to £20,000, 7 per cent.

On £20,000 and any greater amount, 10 per cent.

Strangers in blood, except adopted children, pay three per cent. in addition to the above rates, making the maximum thirteen per cent. The children, step-children, and grandchildren of the deceased are taxed at one-half the regular rates, and the surviving wife or husband is entirely exempt.

The taxable property includes all personal property in New Zealand which passes through the hands of the administrators, even though the decedent had a foreign domicile. Debts, funeral expenses, and testamentary expenses are deducted. It is the duty of the administrator to file with the Commissioner of Stamps within six months from the grant of administration a statement showing the amount of the property and charges, and to pay the duty on the final balance of the estate.

¹ 1885, no. 21.

In order that no property in the colony might escape, the amendment of 1885 provided that no property in New Zealand belonging to any person dying abroad should vest in any person until the probate or letters of administration had been granted or resealed in New Zealand. Settlements and deeds of gift¹ are subject to the tax.

South Australia. South Australia has a scheme of probate and succession duties² very similar in some respects to the English system of death duties, but lacking many of its intricacies. The succession duty is not progressive as in the other Australasian colonies, but is graduated according to relationship as in the mother country. The percentages of the English legacy duty apply in South Australia to both real and personal property, as follows:

	Per cent.
Lineal descendant or ancestor	1
Brother or sister, or descendant thereof	3
Brother or sister of a father or mother, or descendant thereof	5
Brother or sister of a grandfather or grandmother	6
More distant relatives and strangers	10

If the husband or wife of the successor is of nearer consanguinity to the decedent than is the successor himself, the rate for the nearer degree of relationship applies.

The exemptions are: (1) The surviving husband or wife; (2) single successions of less than £20, and estates not exceeding £50; also estates of £1,000 and less when the property goes to the children of the deceased; (3) money in trust for the payment of the succession duty; (4) books, works of art, gems, coins, medals, specimens of natural history, *etc.*, bequeathed to any corporation, university, endowed school or museum, to be kept and not sold.

As in England, the interest of a successor in realty is considered to be of the value of an annuity equal to the annual

¹ 1891, no. 30, § 8.

² No. 35 of 1876, amended by no. 225 of 1881 and no. 361 of 1885.

value of the property; and the duty is paid in eight equal semi-annual instalments, beginning one year after the successor acquires possession. The duty on personalty is payable upon coming into possession; but if the personalty is given by way of an annuity, the duty is payable in four equal annual instalments. No duty is payable on plate, furniture or other articles not yielding revenue, unless the possessor has the power to sell them. Allowances are made for incumbrances except in certain special cases.

Gifts made within one year of the donor's death are presumed to be made with intent to evade the payment of the duty unless the contrary is proven, and are therefore subject to the duty, as well as donations *causâ mortis* and other gifts to take effect on death.

The accountable persons are required to give notice of their successions to the Commissioner of Inland Revenue. This officer has certain discretionary powers as to the compounding and commuting of duties and receiving advance payments at a discount.

The probate duty of one per cent. where there is a will and one and one-half per cent. in case of intestacy now applies only to estates of more than £1,000. But in all cases there is a regressive probate fee¹ also discriminating against intestacy. It is graduated from 5s. on estates not exceeding £50 to £5 on all estates of more than £5,000, where there is a will; where there is no will, the fee is about one-half more.

In 1890 the colonial parliament rejected a bill² which proposed to substitute for the succession and probate duties a single progressive tax, varying from one-half of one per cent. for small amounts remaining in the decedent's family to fifteen per cent. for large amounts going to strangers. In the fiscal year 1891-92, the probate and succession duties amounted to

¹ No. 537 of 1891.

² Legislative Council no. 23.

£25,699, or a little more than three per cent. of the revenue from taxation.¹

*Tasmania.*² Tasmania has for many years had a slightly progressive succession tax on personalty alone, the rates being two per cent. for amounts less than £500, and three per cent. for greater amounts. A few years ago the government made an unsuccessful attempt to extend the tax to land.

§ 3. *The Cape of Good Hope.*³ Cape Colony has had a succession duty since 1864. The rates are one per cent. for lineal descendants and ancestors, two per cent. for brothers and sisters, three per cent. for descendants of a brother or sister, and five per cent. for more distant relatives and strangers. The surviving husband or wife is exempt. No duty is payable on any succession of less than £20, on any child's portion of less than £100, or in any case where the value of the whole estate is less than £100. Bequests to certain charitable institutions, such as hospitals and asylums, are exempt; but trustees for other public purposes pay the maximum duty of five per cent.

The duty becomes payable when the heir acquires possession. Donations *mortis causâ* are taxed at the same rates as successions.

§ 4. *Canada.* The inheritance tax was of very little importance in Canada until 1892, when it was adopted by the three principal provinces almost simultaneously. In two of these provinces the principle of progression is applied in a limited degree, and in all three the tax rises as high as ten per cent. in the case of bequests to strangers in blood. There are also graduated probate fees in some of the provinces, amounting practically to light inheritance taxes.

Ontario. One of the most interesting of inheritance taxes

¹ *Financial Statement of the Treasurer*, 1892, p. 29.

² Dilke, *Problems of Greater Britain*, pt. ii, chap. iv.

³ *Sources of Revenue of the Colony of the Cape of Good Hope*, 1890, p. 69.

is that introduced in Ontario by the act of April 14th, 1892.¹ It is worthy of note in many ways; it is especially remarkable for its generous exemptions, for its high progressive rates for direct heirs, and for its purpose, the support of asylums and charitable institutions. In short, it is not so much a universal tax as a demand upon the wealthy residents of the province to leave part of their wealth for benevolent purposes. The act begins as follows :

WHEREAS this province expends very large sums annually for asylums for the insane and idiots, and for institutions for the blind and for deaf mutes, and towards the support of hospitals and other charities, and it is expedient to provide a fund for defraying part of the said expenditure by a succession duty on certain estates of persons dying as hereinafter mentioned ;

Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

All estates not exceeding \$10,000, and individual shares not exceeding \$200, are exempt; and the direct heirs are taxable only when the whole estate exceeds \$100,000. The decedent's father, mother, husband, wife, children, grandchildren, daughters-in-law and sons-in-law pay two and one-half per cent. when the estate is between \$100,000 and \$200,000, and five per cent. when it exceeds \$200,000; the grandparents and more remote ancestors, brothers and sisters and their descendants, and uncles and aunts and their descendants pay five per cent., and all other persons ten per cent., whenever the estate exceeds \$10,000 in value. Bequests for religious, charitable, or educational purposes are exempt.

The tax applies only to property situated in Ontario, of decedents domiciled in Ontario at the time of their death or within five years previous. The sheriff is to act as appraiser, reporting to the Surrogate Registrar, and receiving five dol-

¹ 55 Vict , chap. 6.

lars a day for his services. The tax is payable to the Provincial Treasurer within eighteen months of the decedent's death; if it is not paid within that time, interest at six per cent. from the time of the death is added.

Besides this tax there are approximately proportional probate fees,¹ both for the government and for the judges of the surrogate courts. Together these fees amount in most cases to \$1.50 for each \$1,000 of the estate; the government fee is fifty cents for each \$1,000, and the judge's fee is just double the government fee except in the case of estates of less than \$3,000, when it is somewhat more.

Nova Scotia. Before the Ontario law had been finally adopted, the Nova Scotia House of Assembly unanimously resolved to establish a very similar tax for a similar purpose.² The act³ was finally passed on the 30th of April. It is less radical than the Ontario law in the matter of exemptions, but it compensates in part for this difference by taxing in some cases only the excess over the exempted amount. The exemptions are estates not exceeding \$25,000 inherited by the immediate relatives and estates not exceeding \$5,000 in other cases, and individual shares of \$200 or less. There are three classes of heirs, as in Ontario; the nearest relatives pay two and one-half per cent. on the excess over \$25,000, but five per cent. on any excess above \$100,000; the second class pays five per cent. and the third class ten per cent. on the whole amount. By a curious error in the law, brothers and sisters are included in both the first and the second class. The proceeds of the tax are to be applied to the care of the sick and insane, and the support of other charities. Property bequeathed for religious, charitable, or educational purposes is exempt.

The tax applies to property situated within the province,

¹ *Revised Statutes*, 1887, chap. 50.

² *Journal and Proceedings of the House of Assembly*, 1892, p. 101.

³ 55 Vict., chap. 6.

without regard to the domicile of the decedent, and to property which comes into the possession or control of Nova Scotia executors and administrators.

The probate fees in Nova Scotia vary slightly with the value of the estate, but are uniform for all estates above \$4,000.

Quebec. The passage of these laws in Ontario and Nova Scotia was followed two months later by the adoption in Quebec of an inheritance tax levied according to somewhat different principles, and for a purely fiscal purpose. The preamble of the act¹ contains a statement of the provincial debt, and explains the insufficiency of the revenue to meet the increased expenditures of the province. To meet the deficiency the act imposes an inheritance tax and a tax on transfers of real estate. Direct heirs are exempt from the former unless the net value of the estate exceeds \$10,000; the rate is then one per cent. Brothers and sisters and their descendants pay three per cent.; other collateral relatives are divided into two classes, which pay six and eight per cent. respectively; and the rate for strangers in blood is ten per cent.

Heirs and personal representatives are required to make declaration under oath, setting forth the amount of the property and debts; in case of false statement or failure to make the required returns the tax is doubled, and a penalty of \$100 is imposed in addition. The tax must be paid before the title to the property can vest in any person. When property is transferred in usufruct the whole tax is payable by the usufructuary, and no tax is required of any other beneficiary under the same will.

British Columbia. Proportional probate fees or duties have been collected in British Columbia for many years. The rates were fixed originally by the Chief Justice of the Supreme Court, but more recently by a commission appointed by the Lieutenant-Governor in Council.² There was formerly a uni-

¹ 55 and 56 Vict., chap. 17.

² 35 Vict., no. 34; *Consolidated Acts*, 1888, chap. 31, § 72.

form rate of three per cent. on personal estates alone ; but since 1890 the rates have been one per cent. for the decedent's father, mother, husband, brothers and sisters, and five per cent. for all other persons except the widow and children, who are exempt.¹

Manitoba. In Manitoba there is a probate fee of fifty cents for every \$1,000 of the estate, the proceeds of which go to a special fund for the maintenance of the administration of justice by the courts of the province. In addition to this, the judge is entitled to a slightly regressive fee which amounts in most cases to one dollar for every \$1,000, but is never less than two dollars.²

¹ Rules of Court, 1890, Appendix M, p. cxiii.

² *Revised Statutes*, 1891, chap. 37.

CHAPTER III.

THE UNITED STATES.

§ 1. *The Federal Inheritance Taxes.* Very early in the history of the American Union suggestions were made looking to the establishment of inheritance taxes of various kinds. On April 17th, 1794, a special revenue committee of the national House of Representatives recommended a system of stamp duties, to include the following:¹

On inventories of the effects of deceased persons, ten cents.

On receipts for legacies or shares of personal estate, where the sum is above \$50 and not exceeding \$100, twenty-five cents; more than \$100 and not exceeding \$500, fifty cents; for every further sum above \$500, one dollar. Not to extend to wives, children, or grandchildren.

On probates of wills and letters of administration, fifty cents.

Two years later the Committee on Ways and Means reported to the House

that a duty of two per centum ad valorem ought to be imposed on all testamentary dispositions, descents, and successions to the estates of intestates, excepting those to parents, husbands, wives, or lineal descendants.²

By the Stamp Act of July 6th, 1797,³ a tax somewhat similar to the original English legacy duty was levied on receipts for legacies and shares of personal estate, where the amount was more than fifty dollars. The tax was twenty-five cents when the amount was not more than \$100, fifty cents when the amount was above \$100 and not more than \$500, and a dollar additional for every further sum of \$500; but the widow, chil-

¹*American State Papers in Finance*, i, 277.

²*Ibid.*, 409.

³*United States Statutes at Large*, i, 527.

dren, and grandchildren were exempt. The act provided that every receipt for a legacy or share of personal estate should express the true sum paid, in default of which every person concerned either in giving or taking the receipt was made liable to a penalty of \$20; but no penalty was prescribed for not giving any receipt at all. The act also imposed a tax of fifty cents on inventories.

This act was to take effect January 1st, 1798, and continue in operation five years; but a later act¹ postponed its commencement six months, and it was repealed,² together with the other acts imposing internal taxes, before the time set for its expiration. The repeal took effect July 1st, 1802, just four years after the act went into operation.

There was no inheritance tax during the War of 1812, but there probably would have been if the war had continued a few weeks longer. Secretary Dallas, in his report of January 21st, 1815, recommended a system of ten different taxes,³ of which the first three were inheritance taxes proposed in the following language:

1. A tax upon inheritances and devises, to be paid by the heirs or devisees, may be made to produce. . . . \$900,000
2. A tax upon bequests, legacies, and statutory distribution, to be paid by the legatees, or legal representatives, may be made to produce 500,000
3. An auxiliary tax upon all testamentary instruments and letters of administration, to be paid by the executors and administrators, may be made to produce. 200,000

But the treaty of peace had already been signed, and the levying of inheritance taxes was postponed until after the outbreak of the Civil War.

The great revenue act of July 1st, 1862, imposed what was known as the "legacy tax" on the devolution of personal property, and stamp taxes on probates of wills and letters of administration.⁴ The legacy tax was graduated as follows:

¹*United States Statutes at Large*, i, 536.

²*Ibid.*, ii, 148.

³*American State Papers in Finance*, ii, 887.

⁴*United States Statutes at Large*, xii, 483, 485.

	Per cent.
Lineal issue, lineal ancestors, brothers and sisters . . . . .	.75
Descendants of a brother or sister.	1.5
Brothers and sisters of a father or mother, and descendants thereof	3.
Brothers and sisters of a grandfather or grandmother, and descendants thereof.	4.
Other collateral relatives, strangers in blood, and bodies politic or corporate.	5.

The tax was payable only when the entire personal estate of the deceased exceeded \$1,000 in value; and the surviving husband or wife was exempt. Gifts and sales intended to take effect after the death of the grantor were subject to the tax. Every executor and administrator was required to furnish a statement of the personal property, verified by oath, to the assistant assessor of his district, and to pay the tax before distributing the property. Only the clear value was taxable.

The tax on probates of wills and letters of administration was levied according to the following scale:

On estates not exceeding \$2,500	\$0.50
Exceeding 2,500 not exceeding \$5,000	1.00
“ 5,000 “ 20,000	2.00
“ 20,000 “ 50,000	5.00
“ 50,000 “ 100,000	10.00
“ 100,000 “ 150,000	20.00

For every additional \$50,000 or fraction thereof, \$10.

The act of June 30th, 1864, increased these taxes, and supplemented the “legacy tax” by a “succession tax” on real estate.¹ The exemptions remaining the same as before, the rates of the legacy tax were fixed as follows:

	Per cent.
Lineal issue, lineal ancestors, brothers and sisters	1
Descendants of a brother or sister.	2
Brothers and sisters of a father or mother, and descendants thereof	4
Brothers and sisters of a grandfather or grandmother, and descendants thereof.	5
Other collateral relatives, strangers in blood, and bodies politic or corporate	6

¹*United States Statutes at Large*, xiii, 285, 287.

These same rates were made applicable to the succession tax on real estate, except that in that case brothers and sisters were taxed two per cent. instead of one per cent. But there was no exemption of small estates from the succession tax, nor any exemption at first in favor of husband or wife. A retroactive clause in the amendatory act of the next year exempted wives, but not husbands.¹

It was expressly provided that real estate subject to a trust for charitable purposes should be taxed at the maximum rate of six per cent. Persons liable to the succession tax were required to give notice to the internal revenue officials, with accounts showing the value of the property and other particulars. A penalty equal to ten per cent. of the amount of the tax was prescribed for failure to furnish returns within ten days after being notified, or for failure to pay the tax within ten days of the notification of assessment.

Deeds of gift without adequate consideration, even when immediately conferring possession, were made liable to the succession tax; and the treasury officials so construed this provision as to tax transfers with manifestly inadequate consideration on the full amount of the transfer, and not merely on the excess of the value over the consideration.² Marriage was regarded as a valuable consideration, and hence conveyances made in consideration of marriage were not taxable.³

The same act which imposed the succession tax increased the tax on probates and letters of administration to one dollar for estates not exceeding \$2,000, plus fifty cents for every additional \$1,000 or fraction thereof.⁴ The bonds of administrators and executors were subjected to a uniform tax of one dollar.⁵ Estates of \$1,000 and less were exempted from these stamp taxes by the amendatory act of March 2nd, 1867.⁶

¹*United States Statutes at Large*, xiii, 481.

²*Internal Revenue Record*, iii, 197. ³*Ibid.*, v, 115.

⁴*United States Statutes at Large*, xiii, 300.

⁵*Ibid.*, xiii, 299; *Internal Revenue Record*, v, 60.

⁶*United States Statutes at Large*, xiv, 475.

In January, 1866, the special Revenue Commission of which David A. Wells was chairman reported that up to that time the legacy and succession taxes had been practically a dead letter, having yielded only \$546,703 during the previous fiscal year. The Commission recommended certain administrative changes to make the execution of the law more effectual, and predicted that the annual product of these taxes would be thereby increased to at least \$3,000,000. It was estimated that, allowing thirty-two years as the life-time of a generation, these taxes, even at the minimum rate of one per cent., ought to amount each year to $\frac{1}{32}$ of the wealth of the country, or \$5,000,000; but the commission evidently realized that such calculations as this could not be relied upon as accurate, and modified its prediction accordingly.¹

Up to this time no penalty had been prescribed for the failure of executors and administrators to furnish the statements required of them. The act of July 13th, 1866, provided for a penalty not to exceed \$1,000 for wilful neglect, refusal, or false statement. Persons liable to the succession tax were now required to give notice of their liability within thirty days after acquiring possession of the property. This act also provided that any shares of personal property going to a minor child of the decedent should be taxable only on the excess above \$1,000.²

David A. Wells, in his second annual report as Special Commissioner of the Revenue, submitted to Congress in January, 1868, complained that the government did not yet collect in legacy and succession taxes more than half the amount to which it was rightly entitled, although there had been a large increase the preceding year. He recommended the appointment of special officers to have charge of this portion of the internal revenue.³

¹*Reports of the United States Revenue Commission*, p. 31.

²*United States Statutes at Large*, xiv, 140.

³*Report of the Special Commissioner of the Revenue*, 1868, p. 40.

But the reduction of the internal revenue was now the order of the day. The legacy and succession taxes were repealed by section 3 of the act of July 14th, 1870,¹ the repeal going into effect October 1st of the same year. Section 27 of this act provided that taxes already levied but not paid on bequests for literary, educational, and charitable purposes should not be collected. The probate and administration tax remained in force two years longer, but was repealed, together with the other stamp taxes, by the act of June 6th, 1872,² the repeal going into effect October 1st of that year.

During the six years in which the legacy and succession duties were both in force, their annual product increased from half a million to three million dollars, and from one-fourth of one per cent. to one and two-thirds per cent. of the total internal revenue. The receipts for each year are shown below.³

<i>Fiscal Year.</i>	<i>Legacy Tax.</i>	<i>Succession Tax.*</i>	<i>Total.</i>	<i>Percentage of Internal Revenue.</i>
1863	\$56,592.61	. . . . .	. . . . .	0.138
1864	311,161.02	. . . . .	. . . . .	0.266
1865	506,751.85	\$39,951.32	\$546,703.17	0.259
1866	924,823.97	246,154.88	1,170,978.85	0.376
1867	1,228,744.96	636,570.19	1,865,315.15	0.701
1868	1,518,387.64	1,305,023.60	2,823,411.24	1.477
1869	1,244,837.01	1,189,756.22	2,434,593.23	1.521
1870	1,672,582.93	1,419,242.57	3,091,825.50	1.669

Fully two-thirds of the proceeds came from the heirs who paid at the minimum rate. About sixty-five per cent. of the legacy tax was paid by direct heirs and brothers and sisters, and about seventy-five per cent. of the succession tax was paid by direct heirs alone.

§ 2. *Pennsylvania.* Pennsylvania was the first state in the Union to levy an inheritance tax, and with one exception the inheritance tax was the first state tax of any kind in Pennsyl-

¹*United States Statutes at Large*, xvi, 256.

²*Ibid.*, xvii, 256.

³*Report of the Commissioner of Internal Revenue*, 1870, pp. 302, 316.

vania, being antedated only by a duty on the recording of certain legal papers.¹ The collateral inheritance tax was introduced in 1826 for the benefit of the internal improvement fund, and has remained in force, with occasional amendments, to the present day. As the Pennsylvania act of April 7th, 1826,² has directly or indirectly served as the model for much of the subsequent American legislation on the same subject, the first section is worth quoting :

SECT. 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met and it is hereby enacted by the authority of the same, That from and after the first day of May next all estates, real, personal, and mixed, of every kind whatsoever, passing from any person who may die seized and possessed of such estate, being within this commonwealth, either by will or under the intestate laws thereof, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect, in possession or enjoyment, after the death of the grantor or bargainor, to any person or persons, or to bodies politic or corporate, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, shall be and they are hereby made subject to a tax or duty of two dollars and fifty cents on every hundred dollars of the clear value of such estate or estates, and at and after the same rate for any less amount, to be paid to the use of the commonwealth; and all executors, and administrators, and their sureties, shall only be discharged from liability for the amount of any and all such duties on estates, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed : Provided, That no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax.*

The tax was increased to the present rate of five per cent. in

¹ Worthington, *Historical Sketch of the Finances of Pennsylvania*, p. 87.

² Acts of 1825-26, chap. 72.

1846,¹ at a time of great financial embarrassment. Three years later the proceeds were applied to the sinking fund,² where they remained until transferred to the general fund in 1874.³ In 1849 also the exemptions were extended to include daughters-in-law.⁴ The next year an act⁵ was passed declaring that the words "being within this commonwealth" in the original act should be construed to relate to persons as well as to estates. Other amendments have been passed from time to time,⁶ in most cases merely making administrative changes, or providing
* for special cases not covered by the original act. The whole subject was codified in 1887 by "An Act to provide for the better collection of collateral inheritance taxes."⁷ At the session of 1893 a number of amendatory bills were introduced. The most important change proposed was the addition of a progressive tax of from one to five per cent. on direct inheritances; a bill for that purpose passed its second reading in the House on April 20th.

Remainders were formerly taxable at the death of the testator; but under the present law the tax becomes payable when the remainder-man acquires possession, and is assessed on the value of the property at that time.⁸ But a remainder-man may pay the tax at any previous time, on the value of the property after deducting the value of the life estate. An appraiser is appointed by the register of wills whenever occasion requires, from whose appraisement an appeal lies to the orphans' court. Executors and administrators are directed to deduct the tax from pecuniary legacies passing through their hands, and to collect the tax on specific legacies. It is made the duty both of the personal representatives and of the heirs to give notice

¹ Laws of 1846, no. 390, § 14.

² Laws of 1849, no. 369.

³ Laws of 1874, no. 60.

⁴ Laws of 1849, no. 369.

⁵ Laws of 1850, no. 147.

⁶ Laws of 1829-30, no. 98; 1833-34, no. 52, §§ 62, 69; 1841, no. 49; 1846, no. 300; May 4th, 1855; 1878, no. 236.

⁷ Laws of 1887, no. 37.

⁸ Laws of 1849, no. 369, § 13; 1850, no. 147, § 1; 1887, no. 37, § 3.

to the register of wills of any real estate which is liable to the tax.

The tax was at first payable to the county treasurers, but in 1841¹ the duty of collection was transferred to the registers of wills for greater efficiency. For many years the registers retained a commission of five per cent., but in 1891² their compensation was fixed at five per cent. if the receipts amount to less than \$200,000 a year, four per cent. if they amount to \$200,000 and less than \$300,000, and three per cent. if they are \$300,000 or more. The registers are required to make quarterly returns and payments to the State Treasurer. When the tax is paid within three months of the decedent's death there is a discount of five per cent.; when not paid within a year it bears interest at twelve per cent., unless the non-payment is caused by unavoidable delay in the settlement of the estate, in which case the interest is only six per cent., or whatever less amount is realized from the estate in the meantime.

The exemptions remain as they were fixed by the original act of 1826 and the amendment of 1849 exempting daughters-in-law. The courts have held that the exemptions do not include a grandmother, an adopted child, or a son's widow who has remarried.³ Attempts to evade the tax by the creation of trusts and by deeds intended to take effect after the death of the grantor have repeatedly been defeated by the courts.⁴ The net product of the tax has grown in the last forty years from \$143,000 to about a million dollars annually.⁵ The yield for each of the past fifteen years is shown on the next page :

¹ Laws of 1841, no. 49, § 3.

² Laws of 1891, no. 50.

³ McDowell *vs.* Adams, 45 Pa. 430; Commonwealth *vs.* Nancrede, 32 Pa. 389; Commonwealth *vs.* Powell, 51 Pa. 438.

⁴ Tritt *vs.* Crotzer, 13 Pa. 451; Wright's Appeal, 38 Pa. 507; Appeal of Du-bois, 121 Pa. 368.

⁵ *Reports of the Auditor General*, 1852, 1878-1892.

<i>Fiscal Year.</i>	<i>Received at State Treasury.</i>	<i>Refunded.¹</i>	<i>Net Product.</i>
1878	\$283,886.54	\$299.41	\$283,587.13
1879	393,949.12	1,828.02	392,121.10
1880	605,441.29	291.18	605,150.11
1881	747,128.48	194.95	746,933.53
1882	476,852.02	2,280.62	474,571.40
1883	604,764.65	1,359.16	603,405.49
1884	461,465.48	699.56	460,765.92
1885	797,369.33	416.62	796,952.71
1886	662,976.61	891.19	662,085.42
1887	763,871.47	1,151.96	762,719.51
1888	713,434.11	239.69	713,194.42
1889	1,378,453.71	939.53	1,377,514.18
1890	670,371.12	282.96	670,088.16
1891	1,232,766.80	2,041.61	1,230,725.19
1892	1,111,120.65	517.43	1,110,603.22

Besides the collateral inheritance tax, Pennsylvania levies a uniform tax of fifty cents on every probate of a will or grant of administration,² as part of the system of taxes known as taxes on offices and process, or more commonly as taxes on writs, wills, and deeds. This is in addition to the fees of the registers, a part of which also goes into the state treasury.³

§ 3. *Louisiana.* For many years Louisiana had a ten per cent. tax on foreign heirs. In 1828⁴ the legislature enacted that any person who is not a citizen of the United States, or is not domiciliated in any part of said states, shall be subject to pay to this state ten per cent. on all sums which may be due to him as an heir, legatee or donee, by any succession which may be opened in this state.

Personal representatives were instructed to retain the amount

¹ In 1878 the State Treasurer was authorized to refund amounts erroneously paid.—Laws of 1878, no. 236.

² Laws of 1829–30, no. 157, § 5; 1831–32, no. 80, § 36; 1878, no. 227, § 8; Brightly's *Purdon's Digest*, pp. 1476, 1625.

³ Laws of 1831–32, no. 80, § 37; 1878, no. 227, §§ 8, 13; Brightly's *Purdon's Digest*, p. 786.

⁴ Acts of 1828, no. 95, §§ 1, 2.

of the tax and pay it to the Louisiana officials. The wording of the law was changed in later years¹ so that it read as follows:

Each and every person, not being domiciliated in this state, and not being a citizen of any state or territory in the Union, who shall be entitled, whether as heir, legatee, or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state or elsewhere, shall pay a tax of ten per cent. on all sums or on the value of all property which he may actually receive from said succession, or so much thereof as is situated in this state, after deducting all debts due by said succession.

The tax was assailed as unconstitutional by a foreign heir, who maintained that it was a regulation of foreign commerce and a tax upon exports. The United States Supreme Court in 1850 denied that it was either.² It was also claimed to be in conflict with the following article of a treaty concluded between the United States and the King of Württemberg in 1844:³

The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property within the States of the other, by testament, donation, or otherwise, and their heirs, legatees, and donees, being citizens or subjects of the other contracting party, shall succeed to their said personal property, and may take possession thereof, either by themselves, or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country where the said property lies, shall be liable to pay in like cases.

The United States Supreme Court decided that this did not apply to the case of a citizen or subject of either country residing at home and disposing of property there in favor of a citizen or subject of the other, and therefore did not invalidate

¹ Acts of 1842, no. 154, § 4; 1855, no. 315, §§ 7, 8; *Revised Civil Code*, 1870, arts. 1221-1223; *Revised Statutes*, 1870, §§ 13, 1113, 1470, 13,683, 13,684; Voorhies' *Revised Statutes*, 1876, §§ 3345, 3346.

² *Mager vs. Grima*, 8 How. 490.

³ *United States Statutes at Large*, viii, 588.

the Louisiana tax.¹ But strangely enough, the Louisiana courts held that the tax was rendered inoperative, so far as French heirs were concerned, by a treaty of 1853 which provided that in all the states of the Union whose laws permitted it, so long as those laws should remain in force, Frenchmen should enjoy the rights of holding property in the same manner as citizens of the United States, and should not be subjected to taxes on transfers or inheritance different from those paid by American citizens.²

The tax was abolished in 1877.³ The product for that year was \$7,004; for 1875 it was \$3,803.⁴

§ 4. *Virginia*. As early as 1687 the settlement of estates in Virginia was made the occasion of collecting an "enormous fee" of two hundred pounds of tobacco and cask.⁵ But this exaction, though it was doubtless considered enormous by the colonists, was properly a fee rather than a tax; it was a uniform charge by the Governor for impressing probates and letters of administration with the public seal, without which they were invalid. Yet a much smaller probate fee was imposed in the present century under the name of a tax. This was the tax of fifty cents on every "probat" of a will or grant of letters of administration, introduced in 1843.⁶ It was at first charged to the persons liable to pay it by the commissioners of the revenue in the various counties, on information furnished by the clerks of courts; but after the first year it was collected by the clerks themselves, and no will could be admitted to "probat," nor letters of administration granted, until the tax had been paid.⁷

¹ *Frederickson vs. Louisiana*, 23 How. 445.

² *Succession of Dufour*, 10 La. An. 391. See also *Prevost vs. Greneaux*, 19 How. 1.

³ Acts of 1877, no. 86.

⁴ *Reports of the Auditor of Public Accounts*, 1875, p. 3; 1877, p. 4.

⁵ Burk, *History of Virginia*, ii, 300; Ripley, *Financial History of Virginia*, p. 97.

⁶ Acts of 1842-43, chap. 1, § 6; chap. 2, § 9.

⁷ Acts of 1843-44, chap. 2, § 2.

The collateral inheritance tax was first introduced in Virginia by the acts of January 26th and February 6th, 1844.¹ Estates valued at \$250 or more, passing to persons other than the decedent's father, mother, husband, wife, brothers, sisters, or lineal descendants, were subjected to the tax, at rates to be fixed by the legislature in the annual revenue laws. For a number of years the rate was two per cent. Executors and administrators were required to pay the tax on property passing through their hands, "to the sheriff or collector of the public revenue of the proper county or corporation," before distributing the property. In the case of property other than money or real estate, and not converted into cash by the executor or administrator, the tax was to be paid on the appraised value according to the inventory and appraisal required by law. Clerks of courts were instructed "diligently to enquire after and take an account of" all devolutions of real estate, and to report annually to the commissioners of the revenue in each county, who were then to charge the tax to the owners of the property, in addition to the annual land tax.

The collateral inheritance tax appeared in the Code of 1849² in a slightly changed form. It was now made applicable to estates within the commonwealth, without regard to the decedent's domicile. The language of the original act had been ambiguous on this point. Estates of \$250 were now exempted, as well as estates of less than that amount. If the personal representative failed to pay the tax on any estate before paying over the estate, the law prescribed a penalty of ten per cent. per annum from the time the estate was paid over; and it was deemed to have been paid over at the end of one year unless it appeared otherwise. It was made obligatory upon the personal representative to take a copy of a receipt for the taxes paid, and for this a fee of fifty cents was charged.

¹ Acts of 1843-44, chap. 1, § 6; chap. 3.

² Chap. 35, §§ 10, 42; chap. 39, §§ 6-12; chap. 40, § 3.

The rates of two per cent. for the collateral inheritance tax and fifty cents for the probate and administration duty were continued in force down to 1852.¹ In that year the probate and administration tax was raised to seventy-five cents.² In 1856 it was again increased, this time to one dollar.³ In that year the legislature omitted to fix the rate of the collateral inheritance tax, and this omission was held to operate as a repeal. The sections of the Code imposing the tax had not been repealed, but the chapter fixing the rates of taxation had been repealed annually; and the court held that there could be no tax unless its amount or the means of ascertaining it were prescribed by law.⁴

The collateral inheritance tax was not again enacted until 1860, when a tax of two per cent. was imposed upon the collateral devolution of real estate of greater value than \$250.⁵ In 1861, a few weeks before the breaking out of the war, the tax was again applied to all forms of property, and nephews and nieces were added to the list of exempt successors.⁶ The next year the probate and administration tax, which had remained at one dollar since 1856, was increased to \$1.50.⁷ In 1863 the collateral inheritance tax was increased from two to three per cent., and the probate and administration tax to \$2.50.⁸ There was a general increase of the rates of taxation at this time, and the result was that at the beginning of 1864 there was a large surplus in the treasury. The operation of

¹ Acts of 1843-44 to 1847-48, chap. 1, §§ 6, 7; 1848-49, chap. 1, §§ 1, 3; Code of 1849, chap. 40, § 3.

² Acts of 1852, chap. 17, § 16.

³ Acts of 1855-56, chap. 9, § 30.

⁴ Fox's Administrators *vs.* Commonwealth, 16 Grat. 1; Acts of 1852, chap. 17, § 20; 1852-53, chap. 8, § 16; 1853-54, chap. 2, § 19.

⁵ Acts of 1859-60, chap. 1, §§ 9, 38; Code of 1860, chap. 35, §§ 9, 38; chap. 39, §§ 5-11.

⁶ Acts of 1861, chap. 1, § 12.

⁷ Acts of 1859-60, chap. 3, § 44; 1861, 1861-62, chap. 1, § 18.

⁸ Acts of 1863, chap. 1, §§ 15, 23.

the existing tax law was accordingly suspended for that year.¹ In 1865 the probate and administration tax appeared at its old rate of one dollar.² The collateral inheritance tax was omitted from the tax law, and this time it was expressly provided in the enacting clause "that no taxes be imposed on any persons or subjects except those hereinafter mentioned." In 1866 the collateral inheritance tax reappeared at two per cent., the probate and administration tax remaining at the same figure as before.³ The collateral inheritance tax was increased in 1867 to four per cent., and in 1870 to six per cent.⁴ In the latter year also a graduated scale was introduced for the probate and administration tax. The rate was made one dollar on estates not exceeding \$1,000, and ten cents additional for every \$100 or fraction thereof above \$1,000; or approximately one-tenth of one per cent.⁵ This scale of rates remains in force to-day.⁶ The collateral inheritance tax remained at six per cent. until 1884, when it was repealed.⁷ In 1874, however, brothers, nephews and nieces were dropped from the list of favored relatives.

§ 5. *Maryland.* The General Assembly of Maryland established a collateral inheritance tax in 1845⁸ "to aid in paying the debts of the state." The only exemptions were those in favor of the decedent's father, mother, wife, children, and lineal descendants, and all estates of less than \$500; in all other cases the rate was two and one-half per cent. Executors and

¹ Acts of 1863-64, chap. 1. ² Acts of 1864-65, chap. 39, § 33.

³ Acts of 1865-66, chap. 1, § 20; chap. 3, §§ 3, 18.

⁴ Acts of 1866-67, chap. 64, § 3; 1869-70, chap. 45, § 18; chap. 226, § 3.

⁵ Acts of 1869-70, chap. 226, § 13.

⁶ Code of 1887, §§ 579, 590; Acts of 1883-84, chap. 450, § 12.

⁷ Acts of 1870-71, chap. 193, § 3; 1871-72, chap. 385, § 3; Code of 1873, chap. 33, § 19; chap. 35, § 3; chap. 36, § 1; Acts of 1874, chap. 240, §§ 21, 22; 1874-75, chap. 206, § 20; chap. 239, § 12; 1875-76, chap. 161; chap. 162, § 12; 1881-82, chap. 61; chap. 119, § 12; 1883-84, chaps. 389, 513.

⁸ Laws of 1844-45, chap. 237.

administrators were directed to pay the tax on devolutions of personal property to the register of wills. In the case of real estate the tax was at first paid with the general property tax, according to valuations by the levy courts; but after the first year the value was determined by the orphans' courts, and the tax was paid to the registers of wills.¹

The collateral inheritance tax was accompanied by a tax of ten per cent. on the commissions allowed by the orphans' courts to executors and administrators; and it was expressly provided that in fixing the commission no allowance was to be made for the tax, as it was intended to be paid out of the commission, and not out of the estate.² As this tax is incidental to the devolution of property, it may properly be considered here. It might be called a death duty, though it can scarcely be termed an inheritance tax.

The laws relating to these two taxes were strengthened by numerous administrative amendments during the first five years after their adoption,³ and thus amended were embodied in the Code of 1860.⁴ In 1864 there was a general reduction of taxes. The tax on executors' and administrators' commissions was reduced to five per cent., but was restored to the original figure the next year;⁵ the collateral inheritance tax was reduced to one and one-half per cent., and its original rate was not restored until 1874.⁶ In 1880 surviving husbands were added to the list of exempt relatives, and the time for the payment of the tax on a remainder was postponed until after the determination of the preceding estate.⁷

¹ Laws of 1845-46, chap. 202.

² Laws of 1844-45, chap. 184.

³ Laws of 1845-46, chap. 71, § 3; chap. 391; 1846-47, chap. 344; 1847-48, chaps. 222, 230; 1849-50, chap. 447, § 4.

⁴ P. G. L., art. 81, §§ 106-114, 124-147. See also Laws of 1861-62, chaps. 18, 157.

⁵ Laws of 1864, chap. 372; 1865, chap. 127.

⁶ Laws of 1864, chap. 200; 1874, chap. 483, § 113.

⁷ Laws of 1880, chaps. 444, 455.

Both of these taxes are now levied at the original rates.¹ Executors and administrators are directed to pay the inheritance tax on personal property before paying any legacies or distributing the shares of an estate; if the payment is not made within thirteen months from the date of their administration, they forfeit their commissions. In the case of real estate, the tax is made a lien on the property until paid. The estates subject to the tax are valued by appraisers; when a life estate or limited interest is created, the proportion of the tax to be paid by each of the beneficiaries is determined by the orphans' court as they become successively entitled. The law contains no exemption in favor of bequests to charitable institutions, but one such bequest was exempted a few years ago by special act of the legislature, on the ground that the institution was destitute of ready money and unable to pay.² No discount is allowed for prompt payment. Payments are made in all cases to the registers of wills, who are allowed to retain five per cent. of both the inheritance tax and the tax on commissions, as long as their entire compensation from all sources does not exceed certain amounts fixed by the state constitution.³

Executors and administrators pay the tax on their commissions at the time of the passage of their accounts. Any legacy left to an executor by way of compensation is reckoned in the commission; and the tax is payable whether the commission allowed by the orphans' court is claimed by the personal representative or not. Being payable whenever an estate is settled, it forms a considerable source of revenue, and in some years the receipts from this source have exceeded those from the collateral inheritance tax itself. Together these two taxes pay about five per cent. of the state expenses. The amounts received from the registers of wills in each of the last ten fiscal years are shown in the following table:

¹ Code of 1888, P. G. L., art. 81, §§ 97-125; Laws of 1892, chap. 473.

² Laws of 1890, chap. 249.

³ *Banks vs. State*, 60 Md. 305.

<i>Fiscal Year.</i>	<i>Tax on Commissions.</i>	<i>Inheritance Tax.</i>	<i>Totals.¹</i>
1883	\$93,781.20	\$103,311.23	\$204,301.07
1884	110,050.32	86,218.46	202,696.02
1885	39,344.93	146,966.75	192,916.04
1886	77,905.66	52,164.26	135,081.34
1887	50,854.97	45,597.14	98,296.04
1888	39,359.83	57,767.49	98,408.15
1889	41,075.00	56,392.08	98,451.70
1890	57,817.18	83,656.03	144,221.61
1891	45,682.10	67,738.93	116,487.03
1892	58,452.40	114,009.21	173,384.38

§ 6. *North Carolina.* The General Assembly of North Carolina, by "An Act to increase the public revenue" ratified January 18th, 1847,² imposed an inheritance tax of one per cent. on all real estate of the value of \$300 or more, and personal property of the value of \$200 and upwards, passing to any person other than the decedent's widow and lineal descendants. Deeds of gift and other conveyances made with intent to defeat the purpose of the act were declared void. At the next session it was made the duty of personal representatives having in their hands personal property liable to the tax to apply to the courts for the appointment of appraisers.³

The tax was graduated according to relationship in 1855.⁴ On real estate of the value of \$300 or personal property of the value of \$200 going to any one person the rates were made one per cent. for brothers and sisters, two per cent. for uncles and aunts and their descendants, and three per cent for more remote relatives and strangers. The exemptions were ex-

¹ The totals include interest paid by the registers of wills in case of failure to make the quarterly payments to the State Treasurer promptly, and also the excess of their fees over the maximum compensation allowed them by the state constitution, except in a few instances in which such excess for the register of Baltimore County or City was greater than his five per cent. commission on the inheritance and commission taxes; in such cases the difference has been deducted. See *Annual Reports of the Comptroller*, 1883-1892, Table no. 2.

² Laws of 1846-47, chap. 72.

³ Laws of 1848-49, chap. 81.

⁴ Public Laws of 1855, chap. 37; *Revised Code*, 1855, chap. 99, § 7.

tended to include the decedent's husband or wife, lineal descendants and ancestors, sons-in-law and daughters-in-law. There was no exemption in favor of churches or educational institutions.¹ A penalty of \$500 was prescribed for attempting to divide or settle any estate liable to the tax without lawful administration.

This law remained unchanged for four years.² In 1859³ the tax was made applicable to all real and personal estate above the value of \$100, situated within the state, the list of exempt relatives remaining substantially the same. The rates of one, two, and three per cent. were continued⁴ in force until 1865, when they were doubled.⁵ The next year⁶ the \$100 exemption was dropped. From this time on⁷ there were only two rates, one for uncles and aunts and their descendants, and another for more remote relatives and strangers; the former was diminished at first to two and then to one per cent., and the latter varied in different years from one to two and one-half per cent. The inheritance tax was discontinued altogether by being omitted from the revenue act of 1874,⁸ and it has never been re-established.

§ 7. *Alabama.* The Alabama revenue act of 1848⁹ imposed a tax of two per cent. on every bequest of personal property and devise of real estate made in favor of any person or corporation other than the testator's wife, children, grandchildren, brothers and sisters. The tax was made payable by the executor to the clerk of the county court in which the will was ex-

¹ *Barringer vs. Cowan*, 2 Jones Eq. 436.

² Public Laws of 1856-57, chap. 34.

³ Public Laws of 1858-59, chap. 25.

⁴ Public Laws of 1860-61, chap. 32; 2d extra session, 1861, chap. 31; adjourned session, 1862-63, chap. 70.

⁵ Public Laws of 1864-65, chap. 27.

⁶ Public Laws of 1866, chap. 21.

⁷ Public Laws of 1866-67, chap. 72; 1868-69, chap. 108; 1869-70, chap. 229; 1870-71, chap. 227; 1871-72, chap. 58; 1872-73, chap. 144; *Battle's Revisal*, 1873, chap. 102.

⁸ Laws of 1873-74, chap. 134.

⁹ Acts of 1847-48, no. 1, § 86.

hibited for probate. At the next session of the legislature the list of exempt relatives was increased by the addition of the husband, parents, and adopted children, and the tax was made applicable to deeds of gift.¹

Later enactments restricted the tax to legacies, apparently leaving real estate untaxed. The rate was increased during the Civil War, rising at one time as high as ten per cent.² It was afterward reduced to one-half of one per cent. in cases where letters testamentary were taken out in Alabama, and three per cent. in other cases.³ The tax was abolished in 1868 by being omitted from the annual revenue law.⁴

§ 8. *Delaware.* The inheritance tax was introduced in Delaware in 1869.⁵ The rate was at first three per cent. for all collateral relatives, but in 1871⁶ this uniform rate was replaced by a relationship scale somewhat similar to that of the federal tax which had been repealed the year before, except that direct heirs were not included. The rates were as follows:

	Per cent.
Brothers and sisters and their descendants	1
Uncles and aunts and their descendants	2
Great-uncles and great aunts and their descendants	3
Other collateral relatives and strangers.	5

Estates of \$500 or less were exempted, and no tax was required of the decedent's widow. The registers of wills were allowed a commission of only one-half of one per cent. for receiving the payments. The tax was repealed in 1883,⁷ except as to strangers in blood, so that it is now of very little importance. The receipts at the state treasury in 1891 were \$936.06; in

¹ Acts of 1849-50, no. 1, § 1. ² Acts of 1862, no. 1, §§ 2, 24; 1864, nos. 63, 64.

³ Acts of 1865-66, no. 1, §§ 2, 3; 1866-67, no. 260, §§ 2, 4; Code of 1867, §§ 434, 436.

⁴ Acts of 1868, no. 1.

⁵ *Laws of Delaware*, vol. xiii, chap. 390, §§ 12-22. ⁶ *Ibid.*, vol. xiv, chap. 21.

⁷ *Ibid.*, vol. xvii, chap. 11.

1892 they were \$1,231.95.¹ One portion of the Delaware Tax Commission recently recommended that this source of revenue be turned over to the counties.² The tax was repealed at the session of 1893, but the repealing act was in turn repealed, leaving the tax as before.

§ 9. *Wisconsin.* A Wisconsin law of 1868, "relative to the compensation of county judges," besides providing for the payment of the salaries of such judges out of the county treasuries, made it the duty of executors, administrators, and guardians to pay to the county treasurers for the use and benefit of the counties in which the estates administered by them were situated, sums varying from twenty dollars for estates between \$1,000 and \$2,000 to seventy-five dollars for estates of more than \$10,000. Milwaukee county and a few other counties in which the county courts had civil jurisdiction were excepted from the operation of the act.³ The law was repealed in 1872,⁴ but in 1877 the same charges were established in Milwaukee county, by "An Act regulating the salary of the county judge of Milwaukee county."⁵ In 1889 estates not exceeding \$3,000 were exempted, and the rates were fixed at one-half of one per cent. on the first \$500,000, and one-tenth of one per cent. on the remainder;⁶ so that while the charge was proportional in most cases, estates of more than half a million dollars were treated more tenderly than those of less value. The title of the new act declared that the charge it imposed was to be "in lieu of fees," but the Wisconsin Supreme Court held that such an exaction could not be a fee, nor in

¹ *Biennial Report of the State Treasurer*, 1891-1892, pp. 22, 34.

² *Report of the Undersigned Members* [J. B. Pennington, E. H. Bancroft, D. J. Layton] *of the Delaware Tax Commission*, p. 15.

³ General Laws of 1868, chap. 121; *Revised Statutes*, 1871, chap. 117, §§ 59-62, 69.

⁴ General Laws of 1872, chap. 40.

⁵ Laws of 1877, chap. 98; *Revised Statutes*, 1878, § 2483. See also Laws of 1880, chap. 262.

⁶ Laws of 1889, chap. 176.

lieu of, nor equivalent to, a fee, but was a tax imposed as a condition precedent to the administration of the estate; and as a tax it was declared unconstitutional because it applied only to one county.¹

A bill for an inheritance tax was introduced in the Legislature in 1893, but failed to pass.

§ 10. *Minnesota*. "An Act to fix the compensation of judges of probate and provide a fund for the payment of the same," passed by the Minnesota Legislature in 1875,² contained the following provision :

For the purpose of reimbursing the county treasury for the salaries provided to be paid in this act to the judge of probate, it shall be the duty of each executor, administrator or guardian to pay or cause to be paid to the county treasurer for the use and benefit of the county in whose probate court proceedings are to be instituted to settle the estate of any deceased person, the following sums, according to the value of the estate and property of such deceased person, as shown by the inventory and appraisal, that is to say :

§10	when such value shall exceed \$1,000, and shall not exceed \$5,000;
20	" " " " 5,000, " " 10,000;
30	" " " " 10,000, " " 15,000;
50	" " " " 15,000, " " 20,000;

and \$75 in all cases where the value of the estate shall exceed the sum of \$20,000; and in addition all sums necessarily expended in serving or publishing notices required by law.

It was provided that no proceedings should be had in any cause for the settlement of an estate, subsequent to the return of the inventory, until after the payment of the prescribed charges.

In 1885³ the exemption was increased to \$2,000 and the following scale of charges established:

¹ State *vs.* Mann, 76 Wis. 469; 45 N. W. Rep. 526.

² General Laws of 1875, chap. 37; *General Statutes*, 1878, chap. 7, §§ 8, 9.

³ General Laws of 1885, chap. 103; *General Statutes, Supplement*, 1888, chap. 7, § 8.

\$10	when the value shall exceed	\$2,000	and shall not exceed	\$5,000;
25	"	"	"	10,000;
35	"	"	"	15,000;
50	"	"	"	20,000;
75	"	"	"	35,000;
100	"	"	"	50,000;
200	"	"	"	75,000;
300	"	"	"	100,000;
500	"	"	"	150,000;
800	"	"	"	200,000;
1,000	"	"	"	500,000;
5,000	"	"	"	500,000.

It will be noticed at a glance that the scale was clumsily contrived. A classified scale with a uniform charge for each class is unequal enough at best; but in this case the figures appear to have been thrown together at random, without regard to whether the scale was to be in its general effect proportional, progressive, or regressive. Taking either the maximum or minimum column, or the mean between them, the percentages change from progressive to regressive and back again a surprising number of times; and when the half-million mark is reached there is a sudden jump from one-fifth of one per cent. to one per cent.

It is not surprising, therefore, that the Supreme Court of Minnesota decided that the act violated the constitutional requirement that all taxes must be "as nearly equal as may be." The charges it imposed were held to be taxes, and not fees; and the rule of equality was held to be violated both by the \$2,000 exemption and by the arbitrary schedule.¹ But it is not likely that the taxation of inheritances in Minnesota will be permanently prevented by this decision. A number of inheritance tax bills were introduced at the legislative session of 1893; they were strenuously opposed by the Minneapolis Board of Trade, but one of them became law by the act of April 18th, which proposes a constitutional amendment au-

¹State *vs.* Gorman, 40 Minn. 232; 41 N. W. Rep. 948. See p. 95, *infra*.

thorizing a tax not to exceed five per cent. on inheritances and gifts. The question will therefore be decided by means of the referendum at the next general election.

§ 11. *New Hampshire.* In 1878 the New Hampshire legislature, on the recommendation of the State Tax Commission, imposed a collateral inheritance tax of one per cent., "to defray the cost of probate courts," as the title of the act¹ declared. It was provided that

All estates settled in the probate courts of this State, and all transfers of property from the dead to the living, by gift, bequest, or devise, and every succession made under the laws of this State, regulating the distribution of intestate estates, exclusive of the just indebtedness of each and all of said estates, shall pay one per cent. on the value of said estates, to be deducted from each gift, bequest, or distributive share, by the administrator or executor, so that each gift, bequest, or distributive share shall pay its proportional rate.

Exemptions were made in favor of husband, wife, children, and grandchildren. The law was similar in many respects to the federal legacy and succession tax statutes. The tax was made payable to the registers of probate, who were required to make quarterly returns and payments to the State Treasurer.

This form of taxation was declared unconstitutional by the Supreme Court of New Hampshire in 1882.² The next year the legislature provided that the amounts which had been paid in should be refunded on presentation of the receipts;³ and the State Treasurer accordingly returned to taxpayers a little more than \$10,000 of the \$15,000 which had been paid in.⁴

§ 12. *Illinois.* An act passed by the Illinois legislature in 1887,⁵ for the purpose of making the Cook County probate

¹ Laws of 1878, chap. 74; *General Laws*, 1878, chap. 64.

² *Curry vs. Spencer*, 61 N. H. 624. See p. 96, *infra*.

³ Laws of 1883, chap. 75.

⁴ *Reports of the State Treasurer*, 1878-1891.

⁵ Laws of 1887, p. 183.

court self-sustaining, provided for a considerable increase in the usual fees, and in addition prescribed that every applicant for a grant of letters testamentary, of administration, guardianship, or conservatorship by that court should state in the petition the value of the estate, real and personal, and that on the grant of the letters a docket fee should be paid according to the following schedule:

When the estate does not exceed \$5,000	\$5
“ “ exceeds \$5,000 and does not exceed \$20,000 . .	10
“ “ “ 20,000 “ “ 50,000 . .	20
“ “ “ 50,000 “ “ 100,000 . .	50
“ “ “ 100,000 “ “ 300,000 . .	100
“ “ “ 300,000 “ “ 1,000,000 . .	250
“ “ amounts to 1,000,000 and upwards	1,000

In 1891¹ the scale was at once equalized and simplified by making the charge for estates of more than \$5,000 one dollar for every \$1,000 of the estate, or about one-tenth of one per cent.; the charge for estates of \$5,000 and less remaining as before. When the deceased leaves a widow or children residing in Illinois, and the entire estate does not exceed \$2,000, the probate judge is instructed to remit the fee; and he may in his discretion suspend, modify, or remit the fee in any case where the estate does not exceed \$500.

§ 13. *New York.* The New York inheritance tax is of recent adoption, but it has come to be of more importance than that of any other American commonwealth. It was first introduced in 1885, and amendments of greater or less importance have been made at nearly every subsequent session of the Legislature.² The original act imposed a tax of five per cent. on collateral inheritances, classing brothers and sisters with

¹ Laws of 1891, p. 137.

² Laws of 1885, chap. 483; 1887, chap. 713; 1889, chaps. 307, 479; 1890, chap. 553; 1891, chap. 215; 1892, chaps. 167, 168, 169, 399, 443. Chap. 399, Laws of 1892, “An Act in relation to taxable transfers of property,” is a complete revision of the previous statutes.

the exempt relatives; this was supplemented in 1891 by a tax of one per cent. on direct inheritances of personal property of the value of \$10,000 or more. In 1892 a bill to extend the direct inheritance tax to real estate was favorably reported to the Assembly, but failed to become law. At the session of 1893 the application of progressive rates to the direct inheritance tax was advocated both by the State Comptroller and by the joint committee on taxation;¹ and while their recommendations were not adopted by the Legislature, it is not improbable that New York may at some future time lead the way in the adoption of progressive taxation, as it has in the extension of the tax to direct heirs.

The relatives who were formerly exempt, and who now pay one per cent. on personal estates of the value of \$10,000 or more, are the decedent's father, mother, husband or wife, children and lineal descendants, brothers and sisters, daughters-in-law, sons-in-law, and adopted children, and any person to whom the decedent for not less than ten years prior to the transfer stood in the mutually acknowledged relation of parent. All other persons pay five per cent. if the estate amounts to \$500 or more. Bishops and all religious, charitable, educational, and scientific corporations are exempt;² but the exemption has been held not to apply to foreign corporations.³ Thus a bequest to the American Board of Commissioners for Foreign Missions was held to be taxable, although the corporation had been granted a limited privilege of holding property in New York.

When the tax is paid within six months of the decedent's death a discount of five per cent. is allowed. When it is not paid within eighteen months, interest is charged at the rate of ten per cent. from the time of the decedent's death, except

¹ *Report of the Comptroller*, p. 28; *Report of Joint Committee Relative to Taxation*, pp. 15, 17.

² Laws of 1890, chap. 553; 1892, chap. 399, § 2.

³ *Matter of Prime*, 49 N. Y. St. Rep. 658.

when there is an unavoidable delay in the determination of the tax, in which case the interest is six per cent. until the cause of delay is removed. The tax is to be paid to the county treasurer (or to the comptroller of New York City), who is allowed a commission for receiving and accounting for it. This commission was originally five per cent. in all cases, but this was found to be more than the labor involved was worth, and since 1887 it has been five per cent. on the first \$50,000 received each year, three per cent. on the next \$50,000, and one per cent. on all additional sums. By this change the commissions have been reduced about three-fifths. The commissions of the comptroller of New York City amounted to more than \$10,000 a year, even before the extension of the tax to direct heirs; in the fiscal year 1892 they were \$11,390.78, and in 1893 they will doubtless be much more than that amount. In New York City the comptroller partially earns his fees, for it is his custom to represent the state in every appraisal, either in person or by deputy; and some office expenses have to be paid out of the amounts retained by him. Yet the commissions on large amounts could probably be still further reduced without interfering seriously with the diligence of the comptroller and treasurers; and as bills are frequently introduced for the purpose, it is likely that this may soon be accomplished.

The law directs the surrogates to appoint appraisers whenever occasion may require. As a rule, an appraiser is appointed for every taxable estate which is not in the form of cash; and in New York City the appraising of estates has become a regular business for two or three individuals selected by the surrogates. The appraiser's fees are three dollars a day for each estate. The appraiser is required to give notice of the time and place of the appraisal to the interested persons, including the county treasurer or comptroller, and is authorized to subpoena witnesses and take sworn evidence concerning the value of the property. He is directed to appraise the

property at its fair market value at the time of the owner's death, and to report to the surrogate, who determines the amount of the tax and gives notice to the interested persons. Any person dissatisfied with the the appraisement and determination of the tax may appeal to the surrogate. Upon the application of any surrogate, the Superintendent of Insurance is required to determine the value of life estates and remainders, according to the method employed by him in ascertaining the value of life insurance policies, but reckoning interest at five per cent. A remainder-man may defer the payment of the tax charged to him until he comes into the actual possession of the property, but in the case of personalty he is required to give bond for the payment of the tax with interest at six per cent.

The tax applies to gifts made in contemplation of death, or intended to take effect at or after the donor's death, as well as to inheritances. It is made a lien on the property transferred, and personal representatives are made liable for its payment. In case of failure to pay the tax, the county treasurer or comptroller notifies the district attorney, who proceeds against the delinquents in the surrogate's court. On the payment of the tax duplicate receipts are given, one of which the personal representative sends to the State Comptroller, who charges the county treasurer or comptroller with the amount of the tax, and returns the receipt, sealed and countersigned, to the personal representative. Such a receipt must be produced by the personal representative before he is entitled to a final accounting of the estate, unless a bond has been given for deferred payment. The county treasurers and the comptroller of New York City make quarterly reports to the State Comptroller and quarterly settlements with the State Treasurer. Surrogates are required to make quarterly reports both to the State Comptroller and to the county treasurer or comptroller, showing what estates are liable to the tax, and county clerks are required to make similar reports of deeds and other

conveyances which appear to have been made or intended to take effect after the death of the grantor.

The apparently simple provision for the exemption of estates of less than \$500 has given rise to no less than three distinct questions of interpretation. The exemption was formerly so construed as to apply to all individual shares of less than \$500,¹ although the word "estate" was plainly used in the statutes. This construction was contrary to the practice in Pennsylvania,² where the same language was employed in the statute; and the Legislature has recently defeated it by defining the words "estate" and "property" to mean the whole taxable property, and not the individual shares.³ Another question was whether the exempt amount was to be deducted from all inheritances of greater amounts. A Kings County surrogate held that it was to be, and showed the inequality of not deducting it; but as there was nothing in the statute to warrant such an interpretation his decision was reversed.⁴ A third question arose as to the liability of legacies of just \$500. The statutes have exempted only amounts of less than \$500, but as a legacy is not payable until a year after the grant of letters testamentary, it was held by the surrogate of Westchester County that a legacy of \$500 was not worth \$500 at the time of the testator's death.⁵ But in New York City a legacy of \$500 is held to be of the fair market value of its face,⁶ and it is not exempt because the payment of the tax would reduce it to less than \$500.⁷

*Proceeds and Cost of Collection.*⁸ The inheritance tax has

¹ Matter of Cager, 111 N. Y. 343; Matter of Howe, 112 *id.* 100.

² Howell's Estate, 147 Pa. 164.

³ Laws of 1892, chap. 399, § 22.

⁴ Matter of Sherwell, 35 N. Y. St. Rep. 403, affirming 34 *id.* 315, overruling 32 *id.* 1020.

⁵ Matter of Peck, 30 N. Y. St. Rep. 209; Matter of Underhill, 2 Connolly 262.

⁶ Matter of Bird, 32 N. Y. St. Rep. 899.

⁷ Estate of Pond, 35 Daily Register 1056.

⁸ *Annual Reports of the Comptroller*, 1886-1892.

become one of the state's most important sources of revenue; and together with the corporation taxes it has brought about a marked diminution in the state property tax. Referring to the new tax in his report of January, 1887, Comptroller Chapin ventured to predict that "in our great and rich state it may easily, in some years, produce a million of dollars of revenue." The prediction was fulfilled in 1889. In the fiscal year 1892, with the direct inheritance tax only partially in operation, the product was \$1,786,218.47, or about one-third of all taxes for general state purposes. It was a little more than all taxes on corporations, including the organization tax, and nearly as much as the state property tax for general purposes. It was between three and four times as much as the state tax on personal property for all purposes, including schools and canals. The following table shows the amounts received at the state treasury in each year since the introduction of the tax:

1886	\$84,128.92
1887	561,716.23
1888	736,062.31
1889	1,075,692.25
1890	1,117,637.70
1891	890,267.54
1892	<u>1,786,218.47</u>
Total to October 1st, 1892	\$6,251,723.42

The one per cent. tax on the personal estate of Jay Gould will probably amount to about \$700,000, and the five per cent. tax on the estate of William G. Hunt will yield some \$250,000 more. Up to the end of the fiscal year 1892, the largest amounts received were paid by the following estates:

Cornelia M. Stewart	\$300,410.32
Henrietta A. Lenox	234,126.90
Samuel J. Tilden	147,283.00
Daniel Fayerweather	114,788.50
William H. Vanderbilt	81,011.55

The expenses of collection in 1892 were \$84,819, or 4.55

per cent. of the entire amount collected. The fees of the county treasurers, the comptroller of New York City, the appraisers, and the district attorneys, the salaries of surrogates' clerks, and the surrogates' office expenses, which were deducted before the payment of the taxes into the state treasury, amounted to \$80,098.25. The State Comptroller employs an inheritance tax clerk at a salary of \$1,600, and during the year 1892 he expended \$3,120.75 in examinations of the surrogates' records in twelve counties in which, during the first few years after the introduction of the tax, the law was not strictly enforced by the surrogates and county treasurers. The amount of delinquent taxes received as a result of these examinations was greater than the entire expense of collection during the same year, and the amount received in interest and penalties alone was greater than the expense of the examinations. Deducting the State Comptroller's expenses, the net produce for the year was \$1,781,497.72. Erroneous payments amounting to \$72,140 were refunded on the order of the Comptroller, but these were chiefly payments made in former years, before the Comptroller was given authority to refund such payments.

§ 14. *West Virginia.* The collateral inheritance tax was adopted by West Virginia in 1887.¹ The rate was made two and one-half per cent., as in Maryland, and the Maryland law was closely followed throughout; but the exemption was extended to all estates of less than \$1,000, and the clerks of the county courts, to whom the tax was made payable, were allowed only two per cent. commission instead of five. The tax on a remainder was made payable at the same time as that on the life estate. The only persons exempted by the original act were the decedent's father, mother, wife, children, and lineal descendants; but in 1891² the surviving husband was added to the list.

¹ Acts of 1887, chap. 31; Codes of 1887, 1891, chap. 32, § 51a.

² Acts of 1891, chap. 116.

The receipts thus far have been quite insignificant, probably owing to the failure of the law to prescribe a definite time within which the tax must be paid, or adequate penalties for delay. The amounts received at the state treasury are shown below:¹

1888	\$36.24
1889	69.44
1890	245.00
1891	314.08
1892	1,004.48
Total to October 1st, 1892	\$1,669.24

§ 15. *Connecticut.* The Connecticut Tax Commission of 1887 reported in favor of an inheritance tax,² and the proposal was adopted with some changes in 1889.³ All property within the jurisdiction of the state, whether tangible or intangible, which passes to persons other than the decedent's father, mother, husband or wife, lineal descendants, adopted children and their descendants, sons-in-law and daughters-in-law, except bequests for charitable, benevolent, educational, religious, or strictly public purposes, is subject to a tax of five per cent. of its value above the sum of \$1,000. The tax is to be paid directly to the State Treasurer, within one year from the decedent's death; if it is not paid within that time, interest is charged at the rate of nine per cent. The tax is payable on the market value of the property as found by the court of probate; but the State Treasurer or any person interested in the estate may demand an appraisal by three disinterested persons to be appointed by the court. The value of annuities and life estates is determined by the actuaries' combined experience tables, reckoning compound interest at five per cent. Within ten days after the filing of an inventory of a taxable

¹ *Biennial Reports of the Auditor, 1887-1892.*

² *Report of the Special Commission*, pp. 33, 46.

³ Public Acts of 1889, chap. 180.

estate in the court of probate, a copy of the inventory must be sent to the State Treasurer, with the appraisal by the court; and once in six months every judge of probate is required to report to the State Treasurer all the property within the jurisdiction of his court which is liable to the tax. The fees of the court of probate are deducted from the amount of the tax to be paid to the State Treasurer. The tax must be paid before the final settlement of the personal representative's account.

The tax yielded \$14,600.42 in the fiscal year 1890, \$74,758.93 in the following year, and \$177,662.97 in the fifteen months ending September 30th, 1892.¹ During the legislative session of 1893 there was some agitation for the repeal of the tax, and various modifications were also proposed, among them being exemptions of real estate, of the nearer collateral relatives, and of the second devolution of property within a year.

§ 16. *Massachusetts.* In October, 1889, the Boston Executive Business Association's special committee on taxation, of which Mr. Jonathan A. Lane was chairman, recommended in its report a collateral inheritance tax like that in New York, and also a tax of two and one-half per cent or more on direct inheritances of personal property, to replace the personal property tax. It was estimated by the committee that these two taxes would yield at least \$4,000,000 a year. An inheritance tax had not long before this been proposed and defeated in the committees of the legislature; but a bill which was introduced at the session of 1891 met with a different fate, becoming law on June 11th.² The five per cent. tax imposed by this law applies only to estates of more than \$10,000. The exempt successors are the decedent's father, mother, husband or wife, lineal descendants, brothers and sisters, adopted children and their descendants, sons-in-law and daughters-in-law, and charitable, educational, and religious societies or institutions which are exempt from the property tax.

¹ *Reports of the Treasurer*, 1890-1892, p. 4.

² Acts of 1891, chap. 425.

The tax may be paid either to the county treasurer or directly to the Treasurer of the Commonwealth. In the former case the county treasurer is required to account with the Treasurer of the Commonwealth; but there is no provision in the act for his remuneration. The tax is payable by the personal representatives at the expiration of two years from the date of their bond, unless the payment is suspended by the probate court to await the disposition of the claim of a creditor; but if any legacies or distributive shares are paid within the two years, the tax upon them becomes payable as soon as they are paid. Interest at six per cent. is charged from the time the tax becomes due. The other administrative provisions of the act are similar to those of the Connecticut law; but there is no provision for semi-annual reports from the probate courts, and the result of this omission is that whenever the personal representatives neglect to file an inventory, the Treasurer of the Commonwealth is not informed of the liability of the estate to the tax.¹

Up to January 1st, 1893, the receipts from the tax were only \$13,854.54;² but as the tax often does not become payable until more than two years after the decedent's death, it is still too early to pass final judgment upon the efficacy of the law. A petition for the repeal of the law was presented to the legislature of 1893.

§ 17. *Tennessee.* A five per cent. collateral inheritance tax was introduced in Tennessee in 1891,³ and continued by the revenue act of 1893.⁴ The relatives originally exempted were the decedent's father and mother, husband or wife, children, brothers and sisters, sons-in-law and daughters-in-law; in 1893 grandchildren were added to the list. There is no exemption of small amounts, or of bequests for charitable purposes. The

¹ *Reports of the Treasurer and Receiver-General*, 1891, 1892, p. 12.

² *Ibid.*, 1892, pp. 12, 18.

³ Acts of the Extraordinary Session, 1891, chap. 25, § 6.

⁴ § 7.

payments are made to the clerks of the county courts, and reported by them to the State Comptroller.

§ 18. *New Jersey.* New Jersey has a five per cent. collateral inheritance tax dating from March 23d, 1892.¹ The exempt relatives are the decedent's father, mother, husband or wife, brothers and sisters, children and lineal descendants, sons-in-law and daughters-in-law. No favor is shown to benevolent institutions, but all estates of less than \$500 are exempt. If the tax is paid within six months of the decedent's death there is a discount of five per cent.; otherwise interest is charged at ten per cent. when the payment is not made within a year, and at six per cent. when it is made within the first year, or when there is an unavoidable delay in the settlement of the estate. When the tax is not paid within the first year the personal representatives are required to give bond for the payment of the principal and interest. The administrative provisions are similar to those of the New York law, except that the payments are made directly to the State Treasurer, who reports semi-annually to the Comptroller.

The provision for discount in case of prompt payment resulted in the payment of the tax on three estates during September and October, 1892. The amount paid was \$21,598.80, of which all but \$182.21 came from one estate.²

§ 19. *Ohio.* The General Assembly of Ohio imposed a collateral inheritance tax by the act of January 27th, 1893.³ The tax applies only to estates of more than \$10,000, and the rate is three and one-half per cent. on the excess above that amount. The list of exempt relatives includes nephews and nieces, in addition to those who are exempt in Massachusetts; but the law gives no encouragement to bequests for charitable or benevolent purposes. The tax is to be paid into the county

¹ Acts of 1892, chap. 122.

² *Report of the Joint Committee on the Treasurer's Accounts*, 1892, p. 70.

³ House Bill no. 219.

treasury by the personal representatives within one year, in default of which interest is to be charged at six per cent. No commission is allowed to the county treasurers, but the necessary expenses of collection are to be deducted before the proceeds are paid into the state treasury. The provisions for determining the amount of the tax are copied from the Connecticut law; and probate judges are required to deliver copies of inventories and make semi-annual reports to the county auditors.

§ 20. *Maine.* The inheritance tax was recommended by the Maine Tax Commission in 1890, and the Legislature adopted the proposal by the act of February 9th, 1893.¹ This act imposes a collateral inheritance tax of two and one-half per cent; inheritances of \$500 and less are exempt, and the tax is calculated only on the excess above the amount exempted. The exempt relatives are the decedent's father and mother, husband or wife, lineal descendants, adopted children and their descendants, sons-in-law and daughters-in-law, as in the Connecticut law of 1889; there is no exemption of bequests for benevolent purposes, but in other respects the provisions of the Connecticut law are closely followed. The probate judges are to make reports to the State Assessors, and the payments are to be made directly to the Treasurer of State.

§ 21. *California.* In California the inheritance tax dates from March 23rd, 1893.² The proceeds are to be applied to the state school fund. The model for the California statute was the New York law as it stood before the extension of the tax to direct heirs. The rate is five per cent.; estates of less than \$500 are exempt; and the exempt successors are the decedent's father, mother, husband or wife, brothers and sisters, lineal descendants, adopted children, sons-in-law and daughters-in-law, and the corporations and institutions exempt by law from taxation. The provisions for the appraisal of estates,

¹ Acts of 1893, chap. 146.

² Statutes of 1893, chap. 168.

payment of the tax, discount, interest, and commissions of county treasurers are taken from the New York law; but appraisers are to be paid five dollars a day, and the interest in the case of unavoidable delay in the settlement of the estate is fixed at seven per cent., beginning eighteen months after the decedent's death.

§ 22. *Summary.* Collateral inheritance taxes are now levied in Maine, Massachusetts, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Tennessee, Ohio, and California; and in New York there is also a one per cent. direct inheritance tax which applies only to personal property. The usual rate for collateral relatives and strangers is five per cent., but in Ohio it is three and one-half, and in Maine, Maryland, and West Virginia two and one-half per cent., and in Delaware the tax applies only to strangers in blood. The exempt estates range from \$250 in Maryland to \$10,000 in Massachusetts and Ohio; Tennessee is the only state which allows no such exemption. There are many variations in the lists of exempt relatives. Besides these proportional taxes, there are light probate taxes in Virginia and Pennsylvania, and approximately proportional fees are charged in the Chicago probate court.

In Vermont a bill for a five per cent. collateral inheritance tax was defeated in November, 1892, being reported adversely by the Senate finance committee after passing the House. But Vermont has a system of probate fees varying with the value of the estate, and amounting in most cases to two dollars for each \$5,000 or fraction thereof.¹

At the legislative sessions of 1893 the inheritance tax was established in Maine, Ohio, and California, bills for the purpose were rejected in Wisconsin and Nebraska, and in Minnesota a constitutional amendment permitting this form of taxation was proposed by the Legislature. A bill intro-

¹ *Revised Laws*, 1883, § 4524.

duced in Nebraska proposed a progressive tax ranging from one per cent. on estates between \$50,000 and \$100,000 to twenty per cent. on estates of more than \$1,000,000. Less radical progressive scales were proposed in New York and Pennsylvania, and the proposed amendment to the constitution of Minnesota provides that the tax may be either "uniform" or "graded or progressive." As these pages go to press bills are pending to establish the inheritance tax in Michigan, to extend it to direct heirs and introduce progressive rates in Pennsylvania, to discontinue it altogether in Massachusetts, and to make some minor changes in the Connecticut law. The bill pending in Michigan is a faithful copy of the New York law, except that the exemption proposed for direct inheritances of personal property is only half as large as in New York. The Pennsylvania bill, which passed the lower house on May 10th, provides for a direct inheritance tax of from one to five per cent., to apply only to estates of \$50,000 or more. The bill has been vigorously denounced by some of the Philadelphia newspapers as unconstitutional and socialistic.

CHAPTER IV.

LEGAL THEORY.

§ 1. *Constitutionality, Nature, and Subject of the Tax.* The constitutionality of the inheritance tax has been repeatedly tested in the courts, and has nearly always been sustained; but inheritance tax laws have been declared unconstitutional in New Hampshire, Minnesota, and Wisconsin. In the two latter states, however, the laws contained some rather unusual provisions; the taxes were probate duties rather than succession duties, and payment was made a condition precedent to the settlement of the estate. In both cases the state claimed that the exaction was a fee, but the courts held it to be a tax. The Minnesota Supreme Court held that the act violated a clause in the bill of rights to the effect that every person "ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay, conformably to the laws." Said the court:

Suitors in this (probate) court of exclusive jurisdiction should not be required to pay, as a condition to their suits being entertained, a tax measured by the value of the property, and without regard to the nature or extent of the judicial proceedings which may be invoked or become necessary.

Moreover, it was held that the act violated the rule of equality of taxation by the exemption of small estates and by an arbitrary and unequal schedule.¹

In the Wisconsin case the tax was declared unconstitutional primarily because it applied only to one county; yet the court intimated that it might have been nullified either as a tax on

¹ *State vs. Gorman*, 40 Minn. 232; 41 N. W. Rep. 948. See p. 79, *supra*.

judicial procedure, as double taxation, or as unequal because of the exemption of small estates. The court distinguished between this tax, which it regarded as a tax upon the property constituting the estate, and a succession tax upon the transmission of the property.¹

New Hampshire is the only state in which the inheritance tax has been declared unconstitutional for reasons which would apply to inheritance taxes in general.² Justice Blodgett, in delivering the opinion of the court, conceded that in the absence of constitutional prohibition the legislature would have had power to impose the tax, but held that it violated two constitutional provisions: that which limited the power of levying taxes to "proportional and reasonable assessments, rates, and taxes upon all the inhabitants and residents within the said state, and upon the estates within the same," and the clause of the bill of rights declaring every inhabitant to be bound to contribute his share. He considered it immaterial whether the tax was on property or on a civil right or privilege, for the same principle of equality and due proportion applied to every species of tax. In this respect he distinguished between the New Hampshire constitution and those of Virginia and Maryland, under which the inheritance tax had been sustained, saying that the latter required only taxes on property to be uniform. The decision continues:

If it is to be regarded as a tax on property, it is open to the objection of unequal and double taxation, and if it is to be regarded as a tax on a civil right or privilege, it is discriminating and disproportional. Nor is the argument that its object is "to defray the cost of probate courts" entitled to any weight, because the constitutional rule of equality cannot be limited or qualified by any consideration of expediency or convenience. The purpose of the act cannot change its character in this respect. Good purposes in taxation are of no

¹ *State vs. Mann*, 76 Wis. 469; 45 N. W. Rep. 526. See p. 77, *supra*.

² *Curry vs. Spencer*, 61 N. H. 624.

consequence if the effect is to subject the taxpayer to exceptional and invidious exactions. . . . Under the reservations of the bill of rights and the limitations of the constitution, it is plainly founded upon pure inequality, and is simply extortion in the name of taxation; and it can therefore never be sustained in this jurisdiction so long as equality and justice continue to be the basis of constitutional taxation.

The distinction made in this decision between the constitution of New Hampshire and those of Virginia and Maryland was one which existed only in the imagination of the New Hampshire judge; the rule of uniformity had been limited to the property tax in Maryland and Virginia only by the interpretation of the courts. The language of the constitutions was rather more explicit than in New Hampshire. The Maryland constitution declared

that paupers ought not to be assessed for the support of the government, but every other person in the state, or person holding property therein, ought to contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.¹

The Virginia constitution prescribed as follows:

Taxation shall be equal and uniform throughout the Commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.²

The Virginia court stated in so many words that the language used was broad enough to cover everything; yet it was held not to invalidate a tax on a civil right or privilege, like the inheritance tax.³ Judge Lee, in delivering the opinion of the court, said:

¹ Constitutions of 1864 and 1867, Declaration of Rights, art. 15.

² Constitution of 1851, art. iv, § 22. ³ *Eyre vs. Jacob*, 1858, 14 Grat. 422.

I do not perceive wherein the inequality and want of uniformity complained of can be said to exist. . . The tax is equal and uniform throughout the state as far as it is susceptible of the application of the rule. It is the same everywhere upon the succession to estates of equal value of whatever subjects they may consist.

Nor was the exemption of small estates considered a violation of the rule of uniformity :

The legislature may define the class to which this tax shall be restricted as they in their discretion may think just and proper, taking care to render it uniform with all those who constitute the class ; or as they are authorized to exempt any particular subject from taxation, it may be regarded as an exemption in favor of those entitled to inconsiderable estates of less value than the sum named.

In like manner the Maryland Court of Appeals decided that while providing for a uniform mode of taxation on property, it was not the purpose of the framers of the constitution to prohibit any other species of taxation.¹

In North Carolina, also, the Supreme Court denied that the inheritance tax violated the constitutional provision requiring all property to be taxed uniformly, and limiting the rate of state taxation.² Said the court :

Undoubtedly if the tax in question must necessarily be regarded as a tax on property, the objection would be irresistible, since this property is not only taxed uniformly with other property, but is subjected to taxation as a legacy in addition. But we do not regard the tax in question as a tax on property, but rather as a tax imposed on the succession, on the right of the legatee to take under the will, or of a collateral distribution in the case of intestacy. . . . Is there any reason why the State shall be denied the power to tax a succession whether it be by gift *inter vivos*, or by will or intestacy? Property itself as well as the succession to it is the creature of positive law. The legislative power declares what objects in nature may be held as property ; it provides by what forms and on what conditions

¹ *Tyson vs. State*, 1868, 28 Md. 577.

² *Pullen vs. Commissioners*, 66 N. C. 361.

it may be transmitted from one person to another ; it confines the right of inheriting to certain persons whom it defines heirs, and on the failure of such it takes the property to the State as an escheat.

The right to give or take property is not one of those natural and inalienable rights which are supposed to precede all government, and which no government can rightfully impair. There was a time, at least as to gift by will, it did not exist ; and there may be a time again when it will seem wise and expedient to deny it. These are the uncontested powers of the Legislature upon which no article of the Constitution has laid its hands to impair them. If the Legislature may destroy this right, may it not regulate it? May it not impose conditions upon its exercise? And the condition it has imposed in this case is a tax.

The constitutionality of the New York tax was upheld by the Court of Appeals in 1887.¹ The objections made against it were that bequest and inheritance were purely natural and absolute rights, and not specially taxable; that the tax was not equal and uniform, but arbitrary, unjustly discriminating between citizens; that the law did not distinctly state the object to which the tax was to be applied; that it did not provide for a legal apportionment of the tax; that it conferred upon the surrogates powers and duties not authorized by the constitution; that due process of law was wanting in that the tax-payers were not given sufficient notice or opportunity to be heard; and that the provision for the taxation of future and contingent estates was oppressive and unconstitutional.

In this case it was not determined whether the tax in question was a tax on property or on the devolution of property :

In either case it is a special tax. In the one case it is a tax upon the particular class of property, and in the other case a tax upon the succession or devolution of property, or the right to receive property in the cases mentioned in the statute. Whether it be one or the other it is free from constitutional objection. It has never been questioned that the legislature can impose a tax upon all sales of

¹ Matter of McPherson, 104 N. Y. 306.

property, upon all incomes, upon all acquisitions of property, upon all business and upon all transfers. Taxes of a similar character were quite extensively imposed by the acts of congress passed during the late civil war. If this be regarded as a tax upon property, then it is free from constitutional objection if it be equally imposed and properly apportioned upon all the property of the class to which it belongs.

The Louisiana tax upon foreign heirs was sustained by the United States Supreme Court as a regulation of inheritance.¹ The opinion of the court was delivered by Chief Justice Taney, who said :

The law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property real or personal within its dominion may be transmitted by last will and testament, or by inheritance ; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. . . . And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.

The levying of a succession tax by the general government manifestly could not be explained as a regulation of inheritance ; the Supreme Court sustained it as an exercise of the taxing power :²

It is plainly an excise tax or duty, authorized by section eight of article one, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises.

It was held to be not a direct tax within the meaning of the Constitution, nor a tax on the land itself :

¹ *Mager vs. Grima*, 8 How. 490.

² *Scholey vs. Rew*, 23 Wall. 331.

The succession or devolution of the real estate is the subject matter of the tax or duty, or, in other words, it is the right to become the successor of real estate upon the death of the predecessor; . . . nor is the question affected in the least by the fact that the tax or duty is made a lien upon the land, as the lien is merely an appropriate regulation to secure the collection of the exaction.

Yet in a recent Pennsylvania case the fact that the tax was a lien on the real estate was made the basis for the opinion that it was a tax upon the property itself, a direct tax upon the thing devised.¹ But although the point was argued by counsel, this opinion was not essential to the decision of the case, and it is therefore to be regarded as dictum. Certainly the better view is that which regards the tax as a condition of inheritance, or a tax on a civil privilege and not on the property transferred.

An important consequence of the prevailing view on this point is that the tax is payable upon the devolution of government bonds. The Pennsylvania Supreme Court arrived at this conclusion by the following argument:²

This five per cent. tax is one of the conditions of administration, and to deny the right of the state to impose it, is to deny the right of the state to regulate the administration of decedents' goods. . . The act operates on the *residue* of the estate after paying debts and charges, and, theoretically, that residue is always a balance in money. The administration-account always exhibits a balance in cash, not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show, and always does show, a cash balance. That is the fund taxed by this law, and not the bond or other chattels which may have produced the fund. Therefore, neither the prohibitory clause of the Act of Congress of 1862, nor any of the principles of decision against state authority to tax that which Federal authority has exempted from taxation, have any application here. The Federal government has not prohibited the states from prescribing rules of inheritance and succession to estates of decedents.

¹ Bittinger's Estate, 129 Pa. 338. ² Strode vs. Commonwealth, 52 Pa. 181.

In New York a United States circuit court came to the same conclusion with respect to government bonds, declaring that "the tax is not imposed upon the bonds, but is one upon the privilege of acquiring property by inheritance. . . . The bonds are the subject of the appraisal, but the privilege is the subject of the tax."¹

The question of the nature and subject of the inheritance tax may soon be brought before the courts in a slightly different connection. The late General George W. Cullom, of New York, made a bequest to the United States for a building at the Military Academy at West Point. The state will maintain that the inheritance tax is not a tax on property, but a regulation of inheritance and bequest, and hence that this bequest is taxable. On the other hand, the executors maintain that the United States is not a body politic or corporate within the meaning of the New York statute, and that the exemption of educational institutions applies in this case. The case is so complicated by the purpose of the gift that the general question of whether a bequest to the United States is taxable may not be decided.

With regard to the general nature of the inheritance tax three legal questions may be said to be fairly well settled: (1) Such a tax is not prohibited by constitutional requirements of equality and uniformity of taxation; (2) it may be imposed as an exercise either of the taxing power or of the power to regulate inheritance; and (3) it is not a tax on the property itself, but on the transfer, or on the privilege of acquiring property by inheritance, or bequest.

§ 2. *Domicile and Situs.*² Some of the most difficult legal problems in connection with the inheritance tax are those which arise from interstate complications. Such problems are

¹ *Wallace vs. Myers*, 38 Fed. Rep. 184.

² See also Dos Passos, *Law of Collateral Inheritance, Legacy and Succession Taxes*, chap. v.

by no means peculiar to the inheritance tax, yet in theory there is probably no other form of taxation which leaves room for so many difficulties of this kind. In determining where an inheritance is to be taxed the law-makers may consider, besides the location of the property, the domicile, not of one person alone, but of either the decedent or the heir, or both; and even the residence of the executors or administrators may be taken into consideration. Of course citizenship may be substituted for domicile as the determining factor, or both may be considered together. But in the United States, as a matter of fact, the only conditions taken into consideration are the location of the property and the domicile of the decedent; thus the problem is practically the same as in the case of the property tax. Louisiana formerly had a tax on foreign heirs alone; but no state attempts to tax inheritances received by its citizens when the location of the property and the domicile of the decedent are both foreign. Not in all points do the various statutes agree so well. Some apply only to property within the taxing state, disregarding domicile altogether; but Pennsylvania, New York, New Jersey, and California attempt to tax the devolution both of all property within the taxing state and of all property left by residents of the state. The attempt has been partially defeated by decisions of the courts which hold that devolutions of real estate situated beyond the limits of the taxing state cannot be taxed.¹ In the latest case of this kind decided by the New York Court of Appeals² Judge Gray, who delivered the opinion of the court, argued as follows:

What has the state done, in effect, by the enactment of this tax law? It reaches out and appropriates for its use a portion of the property at the moment of its owner's decease; allowing only the balance to pass in the way desired by the testator, or permitted by its intestate law, and while in so doing it is exercising an inherent

¹ *Commonwealth vs. Coleman's Administrator*, 52 Pa. 468; *Bittinger's Estate*, 129 Pa. 338; *Matter of Swift*, 50 N. Y. St. Rep. 81.

² *Matter of Swift*, *op. cit.*

and sovereign right, it seems very clear to my mind that it affects only property which lies within it, and, consequently, is subject to its right of eminent domain. The theory of sovereignty, which invests the state with the right and power to permit and to regulate the succession to property upon its owner's decease, rests upon a fact of actual dominion over that property. In exercising such a power of taxation as is here in question, the principle, obviously, is that all property in the state is tributary for such a purpose, and the sovereign power takes a portion, or percentage, of the property, not because the legatee is subject to its laws and to the tax, but because the state has a superior right or ownership, by force of which it can intercept the property, upon its owner's death, in its passage into an ownership regulated by the enabling legislation of the state.

And in a recent case in the Pennsylvania Supreme Court,¹ Mr. Chief Justice Paxson said :

It has not been made to appear how the state of Pennsylvania can impose a tax upon real estate situate in Maryland; and not only impose a tax upon it, but also charge it with a lien for such unpaid tax. While it is conceded that the powers of the state for taxing purposes are very great, they are necessarily limited to either property or persons within her borders. All property of the citizen within the state may be taxed, and all such property outside the state as is drawn to or follows in law the person or domicile of the owner, such as bonds and mortgages, moneys at interest, etc., no matter where situate. But real estate is not drawn to the person or domicile of the owner, for taxation or any other purpose, and hence cannot be taxed outside of the jurisdiction where it is situate. The taxation of property involves the reciprocal duty of protection on the part of the state levying such tax.

But the tax may be made to apply to personal property, wherever situated, if the decedent was domiciled in the taxing state, on the theory that the *situs* of personal property follows the person of the owner;² and on the other hand, personal

¹ *Bittinger's Estate, op. cit.*

² *Matter of Swift, op. cit.*; *Short's Estate*, 16 Pa. 63.

property within the state may be taxed, although the decedent resided elsewhere. Thus in an early Pennsylvania case¹ it was held that the tax applied to securities in Pennsylvania, although both testator and legatee were domiciled in France. In like manner the North Carolina tax was held to apply to property in that state, though the decedent was domiciled in Canada.² More recently it has been decided that the Maryland tax applies to property in Maryland belonging to a resident of California, and consisting of national bank stock, Baltimore city stock, Missouri state bonds, and cash;³ and that the New York law taxes a non-resident's estate in New York, consisting of a mortgage on New York real estate, savings' bank deposits, and corporate stock and bonds.⁴ In the New York case it did not appear whether the stock and bonds were issued by domestic or foreign corporations; and hence it is still regarded as a matter of some doubt whether the law would apply to certificates of foreign corporations in such a case. The Pennsylvania tax has recently been held to apply to the interest of a non-resident decedent in a Pennsylvania limited partnership association.⁵ The same theories of dominion and protection which were applied in the case of real estate have been used also to show that personal property may be taxed where it is situated; and thus the fiction *mobilia sequuntur personam* has been much less completely recognized in America than in England, where the decedent's domicile is the sole test of liability to the legacy duty.⁶ But the English statutes are not explicit upon this point, as the American statutes are; and the judicial construction of the legacy duty act is just the reverse of the rule as to probate duty.⁷

¹ Commonwealth *vs.* Smith, 5 Pa. 142. ² Alvany *vs.* Powell, 2 Jones Eq. 51.

³ State *vs.* Dalrymple, 70 Md. 294. ⁴ Matter of Romaine, 127 N. Y. 80.

⁵ Small's Estate, 151 Pa. 1.

⁶ Thomson *vs.* Advocate General, 12 Clark & Finn. 1; Lenaghan, *The Legacy Duty Considered with Reference to the Law of Domicile*.

⁷ Attorney-General *vs.* Hope, 1 Cromp., Mees. & Ros. 529.

The case of real estate directed by will to be sold gives rise to a complication peculiar to the inheritance tax. It has been held that such a direction works a conversion of the real estate into personalty at the testator's death, and that the tax may therefore be exacted in respect of foreign realty by the state of the testator's domicile.¹ But when the executors have merely the power to sell, without a positive direction to do so, the property is still regarded as real estate, and can be taxed only where it is situated.²

There is a Pennsylvania decision which distinguishes between tangible and intangible personal property, holding that the latter has no *situs* other than the owner's domicile, and hence that a non-resident decedent's United States bonds deposited with a Pennsylvania company for safe-keeping cannot be taxed in Pennsylvania.³ But this is an exceptional case. The general rule is that while real estate is taxable only where it is situated, personal property of all kinds may be taxed either where it is situated or at the domicile of the decedent, according to the apparent intention of the legislature. This rule leaves room for much confusion and a possibility of double taxation, very much as in the case of property, income, and corporation taxes. The law on this point is therefore in an unsatisfactory state, and it will probably remain so until changed by some form of interstate agreement. So long as the various legislatures act independently, conflicts may best be avoided by making the tax applicable only to property within the taxing state; and in a majority of the American statutes now in force this principle has been adopted.

¹ *Miller vs. Commonwealth*, 111 Pa. 321.

² *Drayton's Appeal*, 61 Pa. 172; *Matter of Swift*, *op. cit.*

³ *Orcutt's Appeal*, 97 Pa. 179.

CHAPTER V.

ECONOMIC THEORY.

§ 1. *Historical Survey.* The earliest theoretical discussion of the inheritance tax which has come down to us in that of Pliny the Younger in his Panegyric on the Emperor Trajan. Pliny expressed unqualified approval of Trajan's reforms, especially the exemption of the nearest relatives in all cases. Without such an exemption, he considered the *vicesima hereditatum* oppressive; he called it "*tributum tolerabile et facile heredibus dumtaxat extraneis, domesticis grave.*"¹ He argued that so heavy a tax as the *vicesima* would be borne with great reluctance by those who were entitled to their inheritance by birth, kinship, and community of family worship; who had always regarded the property as their own possession, to be passed on from them in turn to their heirs.² And a father who had just lost his son should not be called upon in his bereavement to take an inventory of what had been left him;³ to tax him at such a time would be to add to his burden of sorrow,⁴ to treat father and son as strangers.⁵ For a father to become

¹ *Panegyricus*, xxxvii.

² *Ibid.*, xxxvii: "Videlicet, quod manifestum erat, quanto cum dolore latari, seu potius non latari homines essent, destringi aliquid et abradi bonis, quæ sanguine, gentilitate, sacrorum denique societate, meruissent, quæque nunquam ut aliena et speranda, sed ut sua semperque possessa, ac diinceps proximo cuique transmittenda cepissent."

³ *Ibid.*, xxxviii: "Nemo recentem et attonitam orbitatem ad computationem vocet, cogatque patrem, quid reliquerit filius, scire."

⁴ *Ibid.*, xxxviii: "Filio amisso, insuper affici alio dolore."

⁵ *Ibid.*, xxxvii: "Quod liberos ac parentes faceret extraneos."

the sole heir of his own son was a great enough sorrow, without making the state an unwelcome co-heir.¹

Adam Smith gave a reason of a less sentimental and more economic nature for exempting direct heirs in some cases :²

The death of a father, to such of his children as live in the same house with him, is seldom attended with any increase, and frequently with a considerable diminution of revenue ; by the loss of his industry, of his office, or of some life-rent estate, of which he may have been in possession. That tax would be cruel and oppressive which aggravated their loss by taking from them any part of his succession. It may, however, sometimes be otherwise with those children who, in the language of the Roman law, are said to be emancipated ; in that of the Scotch law, to be foris-familiated ; that is, who have received their portion, have got families of their own, and are supported by funds separate and independent of those of their father. Whatever part of his succession might come to such children, would be a real addition to their fortune, and might, therefore, perhaps, without more inconveniency than what attends all duties of this kind, be liable to some tax.

But he charged inheritance taxes in general, in common with all other taxes on the transfer of property, with violating his first canon of taxation ; " the frequency of transference not being always equal in property of equal value." He opposed them also on the ground that they " tend to diminish the funds destined for the maintenance of productive labor." For " the revenue of the sovereign," he added, " seldom maintains any but unproductive labourers."

Ricardo elaborated this objection, but avoided the dangerous ground of distinguishing between productive and unproductive labor :

It should be the policy of governments . . . never to lay such taxes as will inevitably fall on capital ; since by so doing, they impair the

¹ *Panegyricus*, xxxviii: "Sic quoque abunde misera res est, pater filio solus heres: quid si coheredem non a filio accipiat?"

² *Wealth of Nations*, bk. v, chap. ii, pt. ii, appendix to articles 1 and 2.

funds for the maintenance of labor, and thereby diminish the future production of the country. . . . If a legacy of £1000 be subject to a tax of £100, the legatee considers his legacy as only £900 and feels no particular motive to save the £100 duty from his expenditure, and thus the capital of the country is diminished; but if he had really received £1000, and had been required to pay £100 as a tax on income, on wine, on horses, or on servants, he would probably have diminished, or rather not increased his expenditure by that sum, and the capital of the country would have been unimpaired.¹

J. B. Say also believed that the national capital would be diminished by the amount of the inheritance tax,² but on the other hand he argued that this was one of the least difficult of all taxes to pay, and so decided that it would be injurious only when carried to excess.³

McCulloch was little influenced by the tax-on-capital argument, and looked at the effect of the tax from another point of view. He criticised Ricardo's objection as follows: ⁴

It might, however, be exceedingly inexpedient to impose or increase any one of the taxes suggested by Mr. Ricardo; and, provided the tax on successions be kept within due limits, we doubt whether the considerations he has stated be entitled to much weight. The slender influence of the tax over the legatee is, perhaps, correctly stated by Mr. Ricardo; but then it is to be borne in mind that the individual who leaves property is aware that it will be subjected to the tax, and he, consequently, has an additional motive to save and amass in order that his heirs may not be prejudiced by its payment. And this circumstance, and the fact of the tax being imposed when the contributors are receiving money or other property, and, consequently, when it is most convenient for them to pay it, appears to be a sufficient answer to the objections against it.

The objection to the inheritance tax as an encroachment

¹ *Principles of Political Economy and Taxation*, chap. viii.

² *Traité d'économie politique* (huitième édition), livre iii, chap. ix.

³ *Cours complet d'économie politique*, pt. viii; chap. iv.

⁴ *Taxation and the Funding System*, p. 290.

upon national capital was demolished by J. S. Mill, who showed that the diminution, if it occurred, would be not so much the result of the mode of taxation as of its excessive amount. Again,

The argument cannot apply to any country which has a national debt, and devotes any portion of revenue to paying it off; since the produce of the tax, thus applied, still remains capital, and is merely transferred from the tax-payer to the fundholder. But the objection is never applicable in a country which increases rapidly in wealth. The amount which would be derived, even from a very high legacy duty, in each year, is but a small fraction of the annual increase of capital in such a country; and its abstraction would but make room for saving to an equivalent amount: while the effect of not taking it, is to prevent that amount of saving, or cause the savings, when made, to be sent abroad for investment.¹

Mill advocated not only progressive inheritance taxes,² but the abolition of collateral inheritance, and a limitation of the amount which any one should be allowed to take either by inheritance or bequest.³ He was more radical than Bentham; he adopted the substance of Bentham's proposal as to collateral inheritance, but he went further and wished to limit inheritance in the direct line also.

Bentham,⁴ writing in the last decade of last century, had propounded the following conundrum:

What is that mode of supply, of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by anybody?

He proposed to solve the riddle by abolishing intestate inheritance except in the case of immediate relatives, and limiting the power of bequest of testators having no direct heirs, leaving

¹ *Principles of Political Economy*, bk. v, chap. ii, § 7.

² *Ibid.*, bk. v, chap. ii, § 3.

³ *Ibid.*, bk. ii, chap. ii, §§ 3, 4; bk. v, chap. ix, § 1.

⁴ *Supply without Burden*.

fathers free to dispose of their property as they pleased. He furthermore suggested that the state should have an equal share in the inheritance of such relatives as grandparents, uncles and aunts, and perhaps nephews and nieces, and a reversionary interest in the successions of childless heirs without prospect of children. In defending his proposal he said :

The advantageous properties of the proposed resource may be stated under the following heads, viz.—1. Its unburthensomeness. 2. Its tendency to cut off a great source of litigation. 3. Its favorableness to marriage. 4. Its probable popularity on that score.

But Bentham wished it distinctly understood that the extension of escheat which he proposed was entirely different from a tax on successions. Ricardo afterward objected to the inheritance tax on the ground that it was not sufficiently recognizable as a tax to be an incentive to economy ; but Bentham objected to it because it was too plainly a tax :

Suffer a mass of property in which a man has an interest to *get into his hands*, his expectation, his imagination, his attention at least, fastens upon the whole. Take from him afterward a part ; . . . the parting with it cannot but excite something of the sensation of a loss.

But in the extension of escheat,

The larger the share of the public the better, even with reference to his feelings ; for the larger it is, the more plainly it will show as a *civil* regulation in matters of succession : the smaller, the more palpably it will have the air of a *fiscal* imposition—the more it will feel, in short, like a *tax*. . . . Pass, instead of the tax, a law of inheritance, giving the public *fifty per cent.* upon certain successions, the burthen may be next to nothing ; pass a law of inheritance, giving the public the whole, the burthen vanishes altogether.

The proposal to abolish inheritance between distant relatives has been approved by writers of the most diverse views. The demand of the earlier St. Simonians, who wished to abolish all inheritance, was greatly modified by *Enfantin*, who was willing to permit inheritance between near relatives, to be lim-

ited by heavy inheritance taxes. In like manner Bluntschli¹ proposed inheritances taxes of from five to thirty per cent. for relatives descended from common great-grandparents, and the abolition of inheritance and bequest between all other persons. He based his proposals on what he called a right of inheritance in the state and commune. This conception of *staatliches Erbrecht* has been adopted by many of the later German writers; and either from this point of view or owing to more purely fiscal considerations, the inheritance tax has been approved by most of the German, French, and English writers on finance and economics.² Even Bastable, who finds a number of theoretical objections to it, concedes "that it has come to be almost universally regarded as an essential constituent of any well-arranged scheme of finance."³

In America the inheritance tax has found an earnest advocate in Professor Ely.⁴ But the discussion of the subject in this country has been chiefly popular rather than scientific. Progressive inheritance taxes are advocated alike in the platform of the Knights of Labor, in the organ of the Nationalists,

¹ "Das Erbrecht und die Reform des Erbrechtes." *Gesammelte kleine Schriften*, i, 233.

² Rau, *Finanzwissenschaft*, §§ 237, 405; Wagner, *Finanzwissenschaft*, §§ 482, 483; Roscher, *Finanzwissenschaft*, § 76; Schäffle, *Steuerpolitik*, p. 508; von Stein, *Finanzwissenschaft*, ii, 209; Umpfenbach, *Finanzwissenschaft*, §§ 203-206; von Scheel, *Erbschaftssteuern und Erbrechtsreform*; Bacher, *Die deutschen Erbschafts- und Schenkungssteuern*; Krüger, *Die Erbschaftsteuer*; Eschenbach, *Erbrechtsreform und Erbschaftsteuer*; Schall, "Verkehrs- und Erbschaftssteuern," in Schönberg's *Handbuch der politischen Oekonomie*, iii, 470; Frantz, *Die sociale Steuer reform*, pp. 85-110; von Kaufmann, *Die Finanzen Frankreichs*, p. 292; de Parieu, *Traité des impôts*, livre vi, chap. iii; Leroy-Beaulieu, *Science des finances*, chap. xi; Sidgwick, *Principles of Political Economy*, bk. iii, chap. viii; *Idem*, *Elements of Politics*, chap. xi, § 5; Graham, *Socialism New and Old*, p. 299; Minton, "The Impediment to Production," *Economic Review*, i, 530.

³ *Public Finance*, bk. iv, chap. viii, § 7.

⁴ *Taxation in American States and Cities*, chap. viii; "The Inheritance of Property," *North American Review*, cliii, 54.

and in the writings of one of America's most famous millionaires. Mr. Andrew Carnegie has more than once declared himself in favor of an inheritance tax rising as high as fifty per cent. in the case of the largest fortunes. In a lecture delivered in New York City in February, 1892,¹ he even went so far as to say that "Every dollar of taxes required might be obtained in this manner, without interfering in the least with the forces which tend to the development of the country through the production of wealth." But he assumed that one-fifth of the property of deceased persons would go to the state; altogether too large a proportion unless all successions, large and small, were to be very heavily taxed. In 1889 he wrote as follows:²

By taxing estates heavily at death the state marks its condemnation of the selfish millionaire's unworthy life. It is desirable that nations should go much further in this direction. Indeed, it is difficult to set bounds to the share of a rich man's estate which should go at his death to the public through the agency of the state.

And in his New York lecture he declared:

There are exceptions to all rules, but not more exceptions, we think, to this rule than to rules generally, that the "almighty dollar" bequeathed to children is an "almighty curse." . . . No man has a right to handicap his son with such a burden as great wealth.

The trend of public opinion, as shown by recent newspaper discussions, seems on the whole to be quite decidedly favorable to the inheritance tax. Objections are sometimes raised in the press as elsewhere; but the practicability of the tax and the comparative ease with which it is collected have a marked effect upon its popularity. As one writer has argued,

It is much more merciful to avaricious human nature to deprive it of something it has never had than to lop off anything—however superfluous—which has been actually enjoyed. . . . On the whole, I can see no better way to diminish the natural pangs attendant

¹ "The Gospel of Wealth," *Lectures to Young Men*, p. 15.

² *North American Review*, cxlviii, 659.

upon paying taxes than to collect as much income as possible in the fleeting moments when the property belongs to nobody in particular.¹

§ 2. *The Arguments Classified.* If we examine the principal arguments which have been adduced to establish the justice of the inheritance tax, we shall find that they are no less than eight in number, and rest upon three quite different conceptions of the nature of the tax. The tax is regarded (1) as a limitation of inheritance; (2) as a fee, or payment for special benefits received; and (3) as a tax according to the ability of the tax-payer. Economic theory thus agrees with legal theory in distinguishing between taxation and the regulation of inheritance; but it goes farther and distinguishes also between fees and taxes, or between the benefit theory and the faculty theory of taxation.

AS A LIMITATION OF INHERITANCE.

1. *The Extension of Escheat Argument* is that represented by Bentham and by all who would abolish or limit collateral inheritance. Briefly stated, the argument is that no good reason exists for intestate inheritance between distant relatives, for in modern times the family consciousness extends only to the nearest degrees of relationship; hence the property of those dying without near relatives should escheat to the state. The same thing may be accomplished in part by an inheritance tax; and even applying the principle in its entirety, since it is difficult to say just where inheritance should cease, there are some relatives from whom the state might better take not the whole, but a part. This argument applies primarily to cases of intestacy; yet such a limitation of inheritance, especially if its purpose were at all fiscal, would naturally be accompanied by a corresponding limitation of the power of bequest.

2. *The Diffusion of Wealth Argument.* Inheritance may be limited not only as to the persons who may inherit, but also as to the amount which any person may take. This form of limi-

¹*Kate Field's Washington*, February 8th, 1893.

tation was proposed by Mill, and has frequently been advocated in recent years as a check upon the perpetuation of dangerously large fortunes. Such a limitation of inheritance and bequest would have a double effect upon the distribution of wealth; it would affect the size of large inheritances directly, and it would encourage the division of large estates by bequest. In like manner, a progressive inheritance tax will diminish large fortunes more than small ones, and if the progression is according to the size of the separate shares rather than of the whole estate it will also encourage a multiplicity of bequests. The inheritance tax may affect the distribution of wealth in still another way, by discriminating in favor of bequests to servants or for charitable purposes.

Of all the arguments for the inheritance tax, the diffusion of wealth argument shows the nearest approach to socialistic tendencies. It is the argument advanced alike by Mr. Andrew Carnegie and by the Nationalists. *The New Nation* expresses the belief "that the drastic application of the inheritance tax is eventually to be one of the most efficacious instruments in preparing the way for economic equality."¹

• AS A FEE.

3. *The Partnership Argument* is simply the benefit theory of taxation in general applied to the inheritance tax. The state is represented by Eschenbach² as a silent partner in the business of each citizen, without whose aid and protection it would be impossible to transact business or amass wealth; when the partnership is dissolved by death, the silent partner is entitled to a share of the capital. Stated in this form the argument may seem rather fanciful; but in its essence it is simply a statement of the intimate relations which exist between the individual and the state, and which may be conceived to give

¹ *The New Nation*, March 4th, 1893.

² *Erbrechtsreform und Erbschaftssteuer*, pp. 54, 55.

the state a better claim to the property of a dead man than any individual has who was of no assistance to the owner in obtaining it.

4. *The Value of Service Argument.* It has often been argued that as inheritance and bequest are not natural rights, but privileges conferred by positive law, those who benefit by them owe something to the state in return for the legal regulations and proceedings which gave them the title to a decedent's property, as well as for the protection of the property from unlawful depredations while the transfer was being effected. The tax has sometimes been compared to an insurance premium,¹ but the comparison is not exact, for it is not the function of the state to make good losses, but to prevent them.

5. *The Cost of Service Argument.* It would be difficult to determine the amount which ought to be paid in accordance with the value of service theory, but it certainly seems no more than just that the cost of probate courts should be defrayed, in part at least, by those who receive the most direct and palpable benefits from them. This argument has been neglected by theoretical writers, but its influence may be plainly seen in the legislation of several of the American commonwealths, where moderate inheritance taxes have been imposed for the express purpose of defraying the cost of probate courts. This argument would logically result in a light tax, not proportional to the estate, but regressive, or even uniform; and as a matter of fact the taxes levied expressly for this purpose have never exceeded one per cent., and the Wisconsin tax was regressive.

AS A TAX.

6. *The Back Taxes Argument.* It is a well-known fact that vast amounts of personal property escape taxation altogether during the lives of the owners. Inheritance taxes have therefore been proposed as a means of collecting taxes which have

¹ Leroy Beaulieu, *Science des finances*, chap. xi.

been evaded during the decedent's lifetime. It was this consideration which led the New York Legislature to impose the direct inheritance tax upon personal property alone. From the standpoint of justice between individuals the argument is not altogether sound, for the inheritance tax bears no necessary relation to the amount of taxes evaded. A collection of the back taxes actually evaded has been proposed in connection with the estate of Jay Gould, and similar exactions are regularly made in Prussia and in some of the cantons of Switzerland, when evasion can be proven; but this is quite distinct from the inheritance tax.

7. *The Lump Sum Argument.* The inheritance tax may better be regarded as in lieu not of taxes which have been evaded, but of taxes which have not been imposed; that is, as a property or capitalized income tax paid once in a life-time instead of once a year.¹ It is paid after the death of the tax-payer, and hence at the time most convenient for him; or it may be regarded as paid by the heir in advance. The burden of annual taxes may be expected to be lightened when an inheritance tax is introduced, and hence the latter is not an additional burden, but only a method of levying a part of the property or income tax. Where there is no personal property tax, an inheritance tax on personal property may be considered as taking its place; and even where a personal property tax nominally exists, but is so universally and uniformly evaded as to be practically a dead letter, the same argument applies. In such a case the back taxes argument and the lump sum argument shade into one another.

When the inheritance tax is regarded as a property tax, an argument which applies to property taxes in general may be applied to it: namely, that levied as an adjunct to the income tax its effect will be to increase the burden on funded income as compared with income from labor.

¹Cf. Bastable, *Public Finance*, p. 526.

8. *The Accidental Income Argument.* From the standpoint of the heir, an inheritance is a sudden acquisition of property, without effort on his part; an accidental and perhaps unexpected increase of wealth, which manifestly increases his tax-paying ability. It is conceivable that where there is an income tax, inheritances might be taxed as income; but even if this were done, the accidental or gratuitous nature of such acquisitions would justify an additional tax, and since it is not done, there is a double reason for the inheritance tax. It is not true in every case, however, that the inheritance of property indicates an increase of tax-paying ability. The death of the head of a family may be a positive economic loss to the wife and minor children who enjoyed the use of his property while he was alive, and who were dependent upon his personal exertions for their support. But if his income was from property rather than from personal exertions, his death will make little difference in the economic condition of the family. If the income was wholly from interest, the economic condition of the family will be somewhat improved, for the income will remain the same, and there will be one less person to be supported by it; if it was from profits, the condition of the family may be improved or otherwise, according to the changes in the employment of the capital which may result from the owner's death. But in any case where property goes to collateral relatives, or even to self-supporting adult sons, there is a distinct increase of tax-paying ability.

The Co-heirship of the State. It remains to consider what is known as the theory of state co-heirship. Bluntschli conceived the state and the local political units as co-heirs with individuals, and the expression has been adopted not only by many German writers, but by Professor Ely in America.¹ It seems to me that the conception of state co-heirship results from a confusion of inheritance and escheat; and that it is

¹ *North American Review*, cliii, 61.

really either a complex idea which may be resolved into what I have called the extension of escheat and the partnership arguments, or else simply a figurative expression for the limitation of collateral inheritance. Bentham is sometimes cited as the chief representative of the theory of state co-heirship; but Bentham himself made no use of that expression. He called the system which he proposed an extension of escheat, and based it simply on the absence of any reason for the operation of inheritance between distant relatives. But later writers have combined with his argument the thought which forms the basis of the partnership argument, thus: There is no reason for inheritance between distant relatives; the state does more for the individual than his distant relatives do, and therefore has a better claim to his property. The state is sometimes represented as a larger family; it is said that the bond of kinship between distant relatives loses itself in the whole nation,¹ which therefore inherits the property of individuals as the family inherits the property of its members. But such expressions must be regarded as metaphorical rather than scientific; the state takes property not by inheritance, but by escheat. The distinction is practically little more than a matter of terminology. The important question is how far inheritance should extend; where inheritance ends escheat will begin.

§ 3. *Objections.* The inheritance tax has been objected to chiefly on the ground that it is a tax upon capital. This objection has been raised by Adam Smith, Ricardo, and a host of lesser writers. Even so recent an author as Bastable² has objected to the inheritance tax as a tax on property rather than on income, and as tending therefore to retard the growth of wealth. But whether a tax is paid out of capital or income depends not upon the form of the tax, but upon its amount and the time allowed for payment. And even if capital should be the source

¹ Umphenbach, *Finanzwissenschaft*, § 203.

² *Public Finance*, p. 525.

as well as the subject of the tax in a given case, it does not follow that the national capital will be diminished. Indeed, one of the arguments in favor of the inheritance tax is that by diminishing large fortunes it will tend to bring about a better distribution of wealth. Hence if we accept the principle that a tax may be used for such a purpose, the tax-on-capital objection is transformed into an argument in favor of the tax; and even if we do not, the objection has no weight in the case of a tax sufficiently light to be paid out of income.

Adam Smith considered the inheritance tax unequal, on account of the varying frequency of transfer; and the same objection has been often brought forward since his time. But this objection holds good only as against the lump sum argument, and has no force as against the other arguments for the tax. It looks only at the property, and confuses the subject of the tax with the tax-payer. The tax may be paid at unequal intervals in respect of the same property, but it is paid each time by a different person, and hence from the standpoint of individual faculty it cannot be said to be unequal. Chile attempts to avoid the supposed inequality by exempting the second devolution within a period of ten years; and the English method of assessing the succession duty according to the successor's expectation of life has been commended by Leroy-Beaulieu¹ as another way out of the difficulty, but this leads to the undesirable result of taxing minors more heavily than adults. In the case of direct succession, where the property may be regarded as belonging to the family in common, there is perhaps some reason for such a concession as that of the Chilean law, if it could be made less arbitrary; but in the case of collateral inheritance it certainly makes no difference in the tax-paying ability of the heir whether the property has changed owners during the previous year or remained in the same hands for half a century. Hence where moderate amounts going to

¹ *Science des finances*, p. 515.

direct heirs are exempt, any provision of this sort is unnecessary.

It has been said that to levy a property tax and an inheritance tax on the same property in the same year constitutes double taxation. This objection is little more than a play upon words. Double taxation, in the proper sense of the term, implies inequality of taxation. The taxing of all property and all income from property, or of all property and all inheritance of property, is not, properly speaking, double taxation; that is, it is not unequal taxation, unless one or the other of the two taxes is unequal of itself.¹

When the provisions of the existing laws are considered, the cry that the inheritance tax is "a tax upon widows and orphans" will be seen to be utterly absurd. In America it is the exception to tax widows and orphans at all; and where the tax does apply to direct heirs, the possibility of oppression is precluded by generous exemptions. Even if all direct inheritances were taxed, the objection would be less real than it at first appears, and would apply in a comparatively small number of cases; for in the natural order of things death comes at an advanced age, after the children are grown up and able to take care of themselves.²

The objections that the tax is a discouragement to industry and thrift, and that it will drive away capital, really apply to the inheritance tax less than to almost any other form of taxation. Death is usually looked upon as a remote event, and occupies no very prominent place in the minds of men; and if a man has the inclination to save property to leave to his heirs, his efforts will not be diminished, but perhaps rather increased, by the thought that one or two per cent. of his savings must go to the state. The inheritance tax is a less dis-

¹ For a discussion of double taxation in general, see Seligman, "The Taxation of Corporations," *Political Science Quarterly*, v, 638.

² Cf. Leroy Beaulieu, *Science des finances*, p. 514.

couragement to industry than an income tax; it is a less discouragement to thrift than a property tax; and no tax which can be levied on movable wealth will have a less effect in driving away capital. The deterrent effect of a tax to be paid after death is not to be compared with that of a tax which must be paid every year.

It is sometimes objected that the tax will be evaded by gifts *inter vivos*. On the other hand, one argument in its favor is that by encouraging the distribution of large fortunes during the lives of the owners it will tend to bring about a better distribution of wealth. As a matter of fact, men do not give away large amounts of property during life for the purpose of escaping taxation. Most men would rather let the state take a small portion of their property after they are dead than give away the whole while they are alive, even to their nearest relatives.

The inheritance tax has been denounced as confiscation, extortion, and a dangerous step toward communism. This is declamation rather than argument; and it is a sufficient answer to point to the numerous theories by which the tax may be explained from the standpoint of pure finance. It is no more confiscation, or extortion, than any other tax; if it appears so it is because it is less familiar, just as the introduction of a property tax where it is a novelty has sometimes been considered a step toward confiscation.¹

§ 4. *Administrative Advantages.* Whatever may be thought as to the equality of the inheritance tax, it will scarcely be doubted that it complies with Adam Smith's other three canons. It is certain, the cost of collection is usually light, and as to the time of payment it is the most convenient of all direct taxes. Mr. Bolton Hall, secretary of the New York Tax Reform League, has denied that it is convenient, on the

¹ "Plan of Tax Reform in Prussia," *Journal of Political Economy*, i, 324; translated from the *Bulletin de statistique et de législation comparée*, December, 1892.

ground that almost all estates are pressed for ready money.¹ It must be admitted that the settlement of estates is often attended with considerable expense; but income-yielding property does not cease to be productive when the owner dies, and when sufficient time is allowed the inheritance tax is in most cases paid with much greater ease and willingness than taxes in general.

This mode of taxation leaves little opportunity for fraud. During the settlement of an estate its value can be ascertained more definitely than at any other time; thus the personal property of Jay Gould, which was assessed at half a million dollars for the property tax, is valued at one hundred and forty times that amount since the owner's death. The appraisal for the inheritance tax may be used as a check on the property or income tax returns, and may thus serve to prevent fraud in those forms of taxation.

The inheritance tax cannot be shifted. There are no perplexing questions of incidence to be considered in connection with it. Its effect is known with certainty; the inheritance is diminished by the amount of the tax.

The receipts from this source do not come in all at the same time, but are distributed through the entire year, and there are comparatively few payments in proportion to the amount of revenue received. It might be thought that the receipts would vary greatly from year to year, but this is true only in small tax districts. The inheritance tax is not suitable for a local tax, except in the case of very large cities; as a state tax, especially in the larger commonwealths, the returns are remarkably constant from year to year. The larger the taxing district, the greater will be the tendency to regularity in the product. For this reason the inheritance tax would be peculiarly suitable for federal purposes if the general government should ever again resort to direct taxation. So long as the state

¹ *Equitable Taxation*, p. 54.

taxes are no heavier than at present, a federal tax might easily be superimposed upon them. The inheritance tax has the advantage of elasticity, for an increase in the rate of the tax cannot diminish the death-rate; and in case of a great war the receipts might be expected to increase automatically to some extent.

§ 5. *Specific Problems.* While some of the special problems which arise in connection with the inheritance tax are peculiar to it, others are similar to the problems of taxation in general. Even the latter, however, may require a different solution in the case of the inheritance tax, because of its double nature as a fiscal exaction and as a regulation of inheritance, and the peculiar position which it occupies in the science of finance on this account.

Progression. The question of progression in the inheritance tax is in some sense a part of the question of progressive taxation in general; yet many writers have considered inheritances a peculiarly fit subject for progressive taxation. On this point Mill wrote as follows:

It is not the fortunes which are earned, but those which are unearned, that it is for the public good to put under limitation. . . . I conceive that inheritances and legacies, exceeding a certain amount, are highly proper subjects for taxation: and that the revenue from them should be as great as it can be made without giving rise to evasions, by donation *inter vivos* or concealment of property, such as it would be impossible adequately to check. The principle of graduation (as it is called,) that is, of levying a larger percentage on a larger sum, though its application to general taxation would be in my opinion objectionable, seems to me both just and expedient as applied to legacy and inheritance duties.¹

An inheritance tax imposed for the purpose of diffusing

¹ *Principles of Political Economy*, bk. v, chap. ii, § 3. In the first edition Mill's opposition to progressive taxation in general is more pronounced, and his advocacy of progressive inheritance taxes less emphatic: "The principle of graduation (as it is called,) that is, of levying a larger percentage on a larger sum, though its application to general taxation would be a violation of first principles, is quite unobjectionable as applied to legacy and inheritance duties."

wealth will necessarily be progressive, for otherwise it will diminish small successions in the same proportion as large ones; and it might be so contrived as to limit inheritance and bequest absolutely. For example, if it were desired to fix the limit in the neighborhood of half a million dollars, the end could be accomplished by means of a progressive inheritance tax levied according to some such schedule of rates as the following:

	Per cent.		Per cent.
On the first \$10,000	0	On the sixth \$20,000 :	12
“ second 10,000	1	“ fifth 30,000	15
“ third 10,000	2	“ fourth 50,000	20
“ fourth 10,000	3	“ fifth 50,000	25
“ fifth 10,000	4	“ sixth 50,000	30
“ sixth 10,000	5	“ fourth 100,000	40
“ seventh 10,000	6	“ fifth 100,000	50
“ eighth 10,000	7	“ sixth 100,000	60
“ ninth 10,000	8	“ fifth 150,000	75
“ tenth 10,000	10	“ fourth 250,000	90
		“ excess above \$1,000,000 .	100

This scale would make the largest amount possible to inherit somewhat less than half a million dollars; namely, \$463,500. Of course the limit could be fixed at any desirable point.

One objection which has been raised against progressive taxation in general is that it has no logical limit. This objection will not apply to a scale which is carried to one hundred per cent. The scale is still arbitrary, it is true; the point at which the inheritance is to be limited must be fixed by considerations of general policy. But one hundred per cent. is not an arbitrary point at which to discontinue the progression, for to go beyond that point would be to make a larger inheritance less than a smaller one. Such high rates will hardly be applied to property or income taxes, but their application to inheritance taxes would be a much less socialistic measure, for it would act as a restriction only on the inheritance of property, leaving the rights of independent acquisition and posses-

sion untouched. While any limitation of the right of property itself would be a step toward equality of wealth, a limitation of inheritance would be only a step toward equality of opportunity. The limitation of direct inheritances to half a million dollars and of collateral inheritances to a still smaller amount was recommended a few years ago by a special committee of the Illinois Bar Association, and a bill for the purpose was introduced in the legislature.¹ Similar measures have frequently been proposed of late;² there seems to be a growing feeling in their favor, and such a limitation of inheritance must be regarded as at least a possibility of the future. If it is to be realized it would better be in the form of a progressive inheritance tax, for it is more arbitrary and unequal to fix a point up to which the privilege of inheritance may be enjoyed without restriction, and beyond which it ceases entirely, than it is to increase the restriction gradually with the size of the inheritance.

- * Whether it would be the part of wisdom to limit inheritance in any such way as this is a fairly debatable question, and much might be said on both sides. On the one hand, it is urged that the accumulation of vast wealth is a source of danger to the public welfare, and that the reasons which justify the institution of inheritance do not apply to very large amounts, for in such cases inheritance is not an incentive to useful industry, but may become an encouragement to idleness. On the other hand, the growth of large fortunes may be said to have some advantages; and if property is to be considered as belonging to the family as a whole rather than to individuals, inheritance in the direct line must be regarded as a necessary part of the right of property. It must be admitted, however,

¹ Jacobson, *Higher Ground*, pp. 194-202; Ely, *Taxation in American States and Cities*, pp. 515-523.

² *The Weekly Review*, iii, 163; Charles Bellamy, *The Way Out*, chap. xiv; Stead, "Jay Gould: a Character Sketch," *Review of Reviews* (American edition), vii, 25.

that inheritance is already greatly limited by an unlimited power of bequest; a system of law which recognizes no *Pflichttheilsrecht* or *portion légitime* cannot be said to rest upon the family idea of property.

But a moderately progressive inheritance tax need not be considered a limitation of inheritance. Progression is sometimes defended on what has been termed the "compensatory" theory as a compensation for state interference, on the ground that inequalities of fortune are due in part to positive law and state action. The back taxes argument requires progression, because large fortunes more easily escape taxation during the owners' lives than small ones. This is only another way of saying that taxation in general is actually regressive; and while the back taxes argument is of little weight as far as justice between individuals is concerned, as applied in this way to whole classes of tax-payers it would doubtless result in a rough sort of justice. This would then be the so-called "special compensatory" theory of progression. Finally, progressive inheritance taxes, like other progressive taxes, may be explained on the theory of marginal utility.¹ All the arguments for progressive taxation in general apply with full force to the inheritance tax, and seem to thoroughly justify progression. It is to be considered, too, that in the case of the inheritance tax progression is eminently practicable.

Graduation according to Relationship. The graduation according to relationship is nearly universal in practice, and has a sound basis in theory. It may be explained by the extension of escheat argument, since the reasons for the institution of inheritance increase with the nearness of the relationship; by the value of service argument, for property might often be transmitted in the direct line even without laws of inheritance; and by the accidental income argument, because whether the devolution of property indicates an in-

¹ For these various theories see Seligman, "The Theory of Progressive Taxation," *Political Science Quarterly*, June, 1893.

crease of tax-paying ability depends largely on the relationship of the heir to the decedent. It cannot be explained by any of the other arguments unless combined with one of these three. Hence from the Nationalist point of view, from which the inheritance tax is regarded solely as a means to diffuse wealth, the only desirable graduation will be according to amount; and so Mr. Bellamy is quite consistent when he says that "the idea of taxing collateral inheritances more heavily than direct inheritances is absurd and vicious."¹

As a matter of expediency, the graduation according to relationship serves a useful purpose. The practical financier will take into consideration the fact that it is much easier to collect a high tax from collateral than from direct heirs. Where the graduation according to relationship exists it is found that the highest taxes are paid with the least reluctance.

On the whole, the graduation according to relationship seems both equitable and necessary, if direct heirs are to be taxed at all. To what extent the graduation should be carried is a more difficult question. As a matter of fact, in case of intestacy the rate always rises at some point to one hundred per cent., either where the knowledge of kinship ends or at some point fixed by law beyond which intestate inheritance does not extend; and this point might well be fixed so as to limit inheritance to those degrees of relationship between which there is a conscious bond of kinship. For the degrees between which inheritance operates, two or three different rates ought to be sufficient; one rate for the widow and direct heirs, one for brothers and sisters and other near collateral relatives, and one for more distant relatives and strangers. The relative claims of remote heirs can scarcely be fixed with so much nicety as to make a dozen different rates more equitable than three.

Exemptions. Whether direct heirs are to be taxed at all

¹ *The New Nation*, March 5th, 1892.

must depend very largely upon financial considerations. The reasons which justify graduation according to relationship lead also to the conclusion that the entire exemption of direct heirs is no injustice; but as the great majority of successions are between immediate relatives, their exemption will have a very decided effect upon the revenue. The exemption is sometimes extended to brothers and sisters, and even to nephews and nieces; but when it is carried so far as this there is little left to tax.

When direct heirs are taxed, there should be an exemption of a sufficient amount to prevent hardship. The amount of the exemption must of course be fixed more or less arbitrarily. A distinction has sometimes been made in the statutes between minor and adult children, and with much reason. It would seem that for the widow and minor children the exempt amount should be such as to yield a revenue sufficient for support. Very small amounts going to collateral relatives may also well be exempted, if only as a matter of convenience. In any case the exemption may be according to the size either of the entire estate or of the separate shares, or both facts may be taken into consideration. If the inheritance tax is considered as a payment of back taxes, the estate will of course be taxed as a whole; but the principle of ability indicates that the determining factor should be the size of the separate shares. The size of the whole estate obviously makes little difference to the individual heirs except as it affects the size of their several portions. By the application of this principle to direct inheritances, the effect of the size of the family upon faculty can be practically recognized, as it probably can be in no other form of taxation.

An amount equal to the exemption should be deducted from the value of all inheritances which are taxed; for otherwise a difference of a few dollars in an inheritance may require the payment of a tax even greater than the difference. This is a rule which holds true of taxation in general, but it applies

with especial force to the inheritance tax because of the greater size of the exemptions. The neglect of this principle in framing particular inheritance tax laws has called forth some of the strongest arguments which have been advanced against them.¹

Bequests for public, benevolent, and educational purposes may well be exempted, for in such cases, if the gift is wise, the whole amount accrues to the benefit of the community. It is not good public policy to tax a bequest for a public purpose more than a bequest to an individual, even a direct heir; and it is rather inconsistent to demand an inheritance tax from an institution whose beneficent offices have led it to be exempted from other taxation.

Some Supplementary Taxes. In some European countries there are taxes on the property of corporations, in lieu of the inheritance taxes paid by individuals. It may perhaps be considered that the immortality conferred upon corporations is analogous to the privilege of inheritance, and justifies a similar tax; but such taxes probably result rather from regarding the inheritance tax as a tax on property. Justice does not require a special tax on corporations in lieu of the inheritance tax, because the stock and bonds of stock companies become subject to the inheritance tax at the death of their owners, and the exemption of societies other than business corporations may be explained as a matter of public policy.

It is more common to find the inheritance tax supplemented by a tax on gifts *inter vivos*. Where the inheritance tax is a part of a system of taxes on transfers of property, there will naturally be a tax on all gifts; but for the purpose of preventing evasion of the inheritance tax it seems to be sufficient to make the tax applicable to gifts *causa mortis*, as is usually done. A tax on all gifts would be impossible to enforce, even if it were otherwise desirable.

¹ *The Boston Herald*, March 4th, 1893; resolutions of the Minneapolis Board of Trade, in *The Minneapolis Tribune*, February 14th, 1893.

What to regard as inheritances for purposes of taxation is sometimes a difficult question. A bequest of freedom to a slave has been held to be taxable.¹ A succession is sometimes defined as any beneficial interest in property accruing in possession or expectancy on the death of any person. The English law, which is very complete in this respect, expressly includes interests accruing by survivorship in the case of joint ownership, by general powers of appointment, and by the extinction of determinable charges; but life insurance is expressly excluded. The question of the taxability of life insurance has thus far been of no importance in this country, because it is usually paid to those relatives who have been altogether exempt. Even where direct inheritances are taxed, life insurance may properly be exempt for the most part; but in the exceptional cases in which it is payable to persons outside of the immediate family, or is very large in amount, it might well be made subject to the inheritance tax.

Application of the Proceeds. That the inheritance tax is usually regarded as something more than a purely fiscal measure is shown by frequent proposals to use the proceeds for benevolent or educational purposes. Such proposals have sometimes borne fruit in legislation. It is interesting to note that the earliest inheritance tax of which we have any definite knowledge was for the purpose of pensioning old soldiers, and that some of the latest enactments on the subject in the United States and Canada have been for charitable and educational purposes. In a small state, it would be unwise to make these special funds wholly dependent on the inheritance tax, because the receipts would be apt to be irregular in amount; but there can be no objection to making the proceeds of this tax a part of a fund which is supplied from other sources also.

§ 6. *Conclusion.* The inheritance tax seems to be pre-eminently an institution of democracy. It is found in nearly every

¹ *State vs. Dorsey*, 6 Gill (Md.) 388.

civilized country on the globe, but it is only in the most democratic countries—Great Britain, France, Switzerland, Canada, the Australasian colonies—that it reaches its fullest development, with high and usually progressive rates, and becomes an important source of revenue. The United States seems thus far to be an exception to this rule, but the increasing popularity of this mode of taxation and its rapid extension from state to state indicate that at no very distant day it may be well-nigh universal in America.

It is not altogether easy to decide which of the arguments for the inheritance tax is most conclusive. Some weight is to be attached to each of them, and certainly no one of them alone will be able to explain all the provisions of actual legislation. The inheritance tax in general may be regarded as a limitation of inheritance, especially between collateral relatives; but it may also be sufficiently well justified from the standpoint of pure finance. It accords as well as any other one tax with the principle of ability, and it serves as a useful adjunct to other taxes in bringing about justice in the fiscal system as a whole. It should be added that it is thoroughly practicable; it is difficult to evade, and large amounts of revenue are obtained from it without any perceptible disturbance of industry. No tax is less oppressive, or paid with less unwillingness. No tax is better adapted to replace the antiquated personal property tax. The experience of New York with the inheritance tax and the experience of a number of states with corporation taxes show that by these two methods of taxation alone most if not all of the state governments could pay all their expenses, leaving all taxes on property to the local political divisions. Such a separation of state and local finance would be most beneficial; it would do away with the necessity of state equalization, and it would make it possible to grant to the localities some degree of self-government in matters of taxation.

APPENDIX.

TABLE SHOWING THE COMPARATIVE FISCAL IMPORTANCE OF THE INHERITANCE TAX IN VARIOUS COUNTRIES.¹

	<i>Product (in Dollars.)</i>	<i>Product per Capita.</i>	<i>Percentage of all State Taxes.</i>	<i>Percentage of State Expenditure.</i>
Great Britain and Ireland.	\$53,609,975	\$1.43	16.	12.3
France ²	39,873,305	1.04	10.3	6.4
Belgium	3,800,000	.63	11.7	5.4
Italy	7,030,000	.23	3.8	2.2
Prussia	1,440,000	.05	2.5	.4
Norway	121,500	.06	1.5	.9
Russia	2,000,000	.02	.7	.5
Switzerland :—				
Geneva	203,800	1.93		
Bern	78,470	.15		
Australia :—				
Victoria	1,328,068	1.17	8.	3.
New South Wales	829,932	.73	6.2	1.8
South Australia	124,635	.38	3.6	1.1
America :—				
New York	1,786,218	.30	20.6	9.2
Pennsylvania	1,111,121	.21	12.3	6.5
Connecticut	94,130 ³	.13	8.9	8.
Maryland	114,009	.11		3.7
Delaware	1,232	.01		.3
West Virginia	1,004	.001		.1

¹ The figures given for Great Britain and Ireland, France, and the American commonwealths are for the fiscal years ending in 1892; most of the others are found by averaging the receipts or budget estimates for two or more years.

² The figures for France include only the proportional *droits d'enregistrement* on successions; they do not include the uniform tax on testaments or the *droits de timbre*.

³ Four-fifths of the receipts for fifteen months.

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Volume IV]

[Number 3

HISTORY OF TAXATION
IN VERMONT

BY
FREDERICK A. WOOD, Ph.D.
Seligman Fellow in Political Science

COLUMBIA COLLEGE
NEW YORK
1894

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III
HISTORY OF TAXATION IN VERMONT

STUDIES IN HISTORY, ECONOMICS AND PUBLIC LAW

EDITED BY

THE UNIVERSITY FACULTY OF POLITICAL SCIENCE
OF COLUMBIA COLLEGE

Volume IV]

[Number 3

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BY

FREDERICK A. WOOD, Ph.D.

Seligman Fellow in Political Science

COLUMBIA COLLEGE

NEW YORK

1894

SS



PREFACE.

THE history of taxation in any one of the American commonwealths should reveal much of value to the student of public finance; such a history of a commonwealth which has a distinctive social and historical character should be peculiarly instructive. In the case of Vermont, there exists the opportunity for observing the tendencies as to taxation of a homogeneous and largely agricultural community, made up in the main of holders of farms of moderate size and cultivated in practically the same manner which has marked New England farming from the colonial days. Indeed, Vermont is undoubtedly to-day the best type of the developed Puritan community existing in New England. The other New England commonwealths have been greatly changed by the rise of manufacturing, the growth of commerce and immigration. Vermont, on the other hand, has maintained to a striking degree the stamp imprinted upon her by the Connecticut pioneers who first brought civilization within her borders and made a chapter of political history more romantic in many ways than any in our annals. It is hoped that in the following pages the progress of taxation in this community has been traced with the accuracy demanded for a clear idea of its more prominent features.

But a word or two need be said as to the bibliography of the subject. Besides the general works on taxation, my chief reliance has been upon the statutes, the journals of the legislature, the court decisions, the reports of officials (par-

ticularly those of the tax commissioners and the Council of Censors), and the governors' messages. In these original documents it is believed the best sources of information have been found. Mention also should be made of that mine of facts concerning Vermont history—the records of the *Governor and Council*. The *Documentary History of New York*, the colonial laws of the province and local histories have been freely consulted in preparing the chapters relating to the period before Vermont announced her independence in 1777.

It is a pleasure to add that a number of the recent officials—especially the present tax commissioner, Hon. James L. Martin—have been most courteous in responding to inquiries as to details. Many others not holding official position have aided me materially in the work of investigation; and to Hon. L. E. Chittenden, of New York, I am indebted for the use of his invaluable library on Vermont in every phase of its past.

F. A. W.

Columbia College, January, 1894.

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CHAPTER I. EARLY POLITICAL HISTORY.

§ 1. *The Fourteenth Commonwealth.* Vermont was the first new commonwealth¹ to be admitted to the Union which had been formed by the people of the thirteen colonies. That it was not numbered with the thirteen in the formalities of the struggle for independence was due to its anomalous position at the time hostilities began. It was not a province of the crown; legally, it was a part of the province of New York. Yet it did not act with New York in any of the measures which that province took in opposition to the British government. There was, in fact, a rebellion against New York rule in existence in the territory now known as Vermont, and this rebellion did not end until, after repeated attempts at coercion and later at compromise, the people had become an independent state, which, in 1791, was erected into the fourteenth commonwealth. Some idea of the nature of this unique struggle is necessary as a background for a full appreciation of the development of taxation in Vermont; and if I am right in assuming that the number of those who are familiar with the issues involved is limited, no apology for a resumé of the facts of significance is needed. Such a resumé will have added pertinence, in that the revolt of the Vermonters, like so many other efforts at resistance to existing government, was partly due to a question of revenue.

¹Although the word "state" is the official designation of Vermont, I have chosen to use in this monograph the more scientific term "commonwealth," the latter having reference to a political division for local government and being distinguished from the "state" by the absence of sovereignty in its people. See Professor J. W. Burgess' article on *The American Commonwealth*, *POLITICAL SCIENCE QUARTERLY*, vol. i (1886), p. 23.

§ 2. *Conflicting Claims to Jurisdiction.* Very little had been done toward the settlement of the territory between Lake Champlain and the Connecticut river north of the Massachusetts line before the French war of 1755-60. Before this war, and to a greatly increased extent during its progress, this was an exposed and dangerous tract. The lakes were a highway for the bands of English, French and Indians who were bent on hostilities. But the close of the war brought tranquillity, and settlements quickly sprang up, under charters from Governor Wentworth, of New Hampshire, who claimed jurisdiction to the westward to a point twenty miles east of the Hudson river—in other words, as far westward as Massachusetts extended. The commission¹ of George II to Governor Wentworth, dated June 3rd, 1741, referred to New Hampshire as

bounded on the south side by a similar curve line pursuing the course of the Merrimack river at three miles distance on the north side thereof, beginning at the Atlantic ocean, and ending at a point due north of a place called Pawtucket Falls, and by a straight line drawn from thence due west across the said river till it meets with our other governments.

Moreover, in an order of the king in council,² dated September 6th, 1744, Fort Dummer, situated on the west side of the Connecticut river, was spoken of as having "lately fallen within the limits of said province of New Hampshire." These official utterances were construed by the New Hampshire governor to mean that his jurisdiction ran westward till it reached the New York jurisdiction at the same point at which Massachusetts and New York met.³ Whether well

¹ Hiland Hall's *Early History of Vermont*, appendix no. 2, p. 476.

² *Ibid.*, appendix no. 3, p. 477.

³ The question of boundary between Massachusetts and New York had not been settled at this time. New York claimed everything eastward to the Connecticut river.

satisfied with his contention or not, Governor Wentworth proceeded on the assumption that it was tenable, and charters to the number of about one hundred and thirty had been granted for establishing that number of townships, when, in July, 1764, at the suggestion of Lieutenant-Governor Colden of New York, an order of the king in council was issued, declaring "the western banks of the river Connecticut from where it enters the province of Massachusetts Bay, as far north as the forty-fifth degree of northern latitude, to be the boundary line between the two provinces of New Hampshire and New York." The order was succeeded in the following spring by a proclamation by the lieutenant-governor, announcing to the settlers on the "New Hampshire Grants" (as the Vermont territory was then called) the fact that henceforth they were to be under New York jurisdiction.¹

§ 3. *Discontent at the King's Decision.* The king's decision was anything but welcome news to the dwellers on the Grants, who, almost without exception, were of New England birth, a large number having come from Connecticut, and many from Massachusetts; and they were both accustomed and attached to the democracy in politics of those colonies. New York, on the other hand, was aristocratic and semi-feudal in spirit. The religious, social and political institutions of the two sections were unlike,² and

¹The claim of New York was based on the charter granted to the Duke of York in 1664, in which the duke was given "all the lands from the west side of Connecticut river to the east side of Delaware bay." Hiland Hall points out that in the charter in the library at Albany, the word "river" is not found after "Connecticut." See his address before the New York Historical Society, note no. 3, p. 15.

²The dominant religious sentiment among the Vermont settlers was that of Congregationalism. Socially and politically, the people were extremely democratic. In the constitution adopted in 1777, not only was slavery formally prohibited, but the right of suffrage was given to "every man of the full age of twenty-one years," upon the sole condition of a year's residence in the state.

almost the only bond between the two was that of a common ancestry in Great Britain. Even this bond was qualified by the presence of the large Dutch element in the population of New York.

But the settlers would doubtless have accepted the decree of the king—reluctantly it is true, yet without serious opposition—had the title to the lands which they had purchased from Governor Wentworth remained undisturbed. The great mass of settlers bought their lands, either directly from the governor or through intermediaries, in entire good faith. Holding titles from the representative of the king whose seat of government was nearest them, they supposed the effect of the king's order¹ in council was to be merely a change of jurisdiction, carrying with it the right to make future grants of land, but in no way affecting the previous grants of Governor Wentworth. In this they were sorely disappointed, for the New York executive began at once to make grants both of land which had not been granted by Governor Wentworth and also of that which had been granted; and this policy was continued by all the executives of the province, despite an order from the king in 1767 commanding temporary cessation, until over 2,000,000 acres had been disposed of. These grants yielded fees to the governor of over \$65,000, while the secretary of the province, the clerk of the council, the auditor, the receiver-general, the attorney-general and the surveyor-general, also received liberal fees. Indeed, the animus of the New York governors seems to have been very largely the desire to put money into their own purses and those of their official subordinates. The land in many instances was sold in large tracts, with the evident purpose of establishing manorial estates similar to those which lined the

¹ The order of the king in council had announced the west bank of the Connecticut "to be" the boundary between the provinces of New Hampshire and New York. The settlers insisted that retroaction could not fairly be authorized by it.

Hudson. The settlers under New Hampshire charters, it should be said, were permitted to have those charters confirmed by the New York officials, and a considerable number of those living on the east side of the Green Mountain range paid a second and much larger fee.¹ On the west side of the range, where more extensive purchases had been made from the New York government than on the east side, and where the friction between the settlers and the king's officers was consequently more irritating, little disposition was shown to comply with any regulations or conditions promulgated from New York.

Not only were the patent fees charged by the New York officials higher than those of Governor Wentworth, but the quit-rent, payable to the crown, was two shillings and sixpence for every hundred acres, while that of Governor Wentworth was but one shilling, and this was not to be demanded until the expiration of ten years from the date of the charter. During the first ten years the only rent exacted by the New Hampshire governor was that of an ear of Indian corn, paid yearly. Its purpose was merely to remind the settlers of the allegiance they owed to the province of New Hampshire and the king.

§ 4. *Opposition to New York Authority.* Such was the situation in the Grants at the beginning of the decade immediately preceding the Revolution. New York attempted, as well as it could, in view of the distance from the provincial capital, to govern in its own centralized and aristocratic manner. The settlers had received from their New Hampshire charters the right to organize themselves into towns, and exercise almost unlimited authority over local affairs,

¹The fees charged grantees by Governor Wentworth were nominal. For a township they were about \$100. Williams' *History of Vermont*, vol. ii, p. 19. Those charged by the New York officials were, in total, \$90.25 per thousand acres, or about \$2,000 for a township.

which, in fact, were the only affairs in which they could be particularly interested. The demand that the New Hampshire charter be confirmed suggested much inconvenience and the payment of a not inconsiderable sum of money. In many cases, too, land held by these charters was granted again before it was possible to have the latter confirmed. The result was inevitable. A spirit of resistance soon showed itself, under the leadership of a few men like Ethan Allen, who, we may readily suspect, found keen enjoyment in the situation. When the claimants under New York charters demanded land already occupied, they met scant courtesy, and were pointedly invited to depart. Suits of ejectment followed, and in a test case heard at Albany¹ the New Hampshire charters were refused as evidence and declared void; a verdict was given for the plaintiff, and a writ of possession issued. The sheriff, however, was unable, even with a large posse, to execute the writ, and the "Bennington mob" was master of the situation.

While the rebellion was successfully maintained on the west side of the mountains, on the east side the New York government was established in both Cumberland (now Windham) and Gloucester (north of Cumberland) counties, in the form of courts. But even on the east side the obedience to New York was to a great extent perfunctory. The opposition to the government of that province was carried on in the towns on both sides of the mountains by committees of safety, and conventions for conference were held at intervals. The revolt was well under way when the war broke out. The "Westminster massacre," in which ten men were wounded, two mortally, occurred on March 14th, 1775, and was occasioned by the interference of the people with a

¹ That of *Small vs. Carpenter*, June, 1770. See Z. Thompson's *Civil History of Vermont*, part ii, p. 21. See further the bill of exceptions, Hiland Hall's *Early History of Vermont*, appendix no. 6, p. 481.

session of the court held under the usual New York authority. Doubtless the motives of the rioters were somewhat mixed, but that the dislike existing for royal courts was intensified by the fact that the Cumberland county court had its immediate origin in New York, can hardly be questioned.

§ 5. *Independence Announced.* The sentiment in favor of separation from New York grew rapidly, and in a convention held at Westminster it was voted, on January 15th, 1777, "that the district of land commonly called and known by the name of New Hampshire Grants be a new and separate state, and for the future conduct themselves as such." At this convention a committee was appointed to draft a declaration of independence, which was published a few weeks later in the *Connecticut Courant*. A convention at Windsor in the following July adopted a constitution and appointed a committee of safety to assume charge of affairs until the officers called for by the constitution could be elected. The constitution was not submitted to a vote of the people, the exigencies of the time making it desirable that it be put into force at once. In this decision of the leaders of the revolt, their supporters, who numbered by far the greater part of the inhabitants of the Grants, acquiesced without protest. They appear to have reposed the utmost confidence in the discretion and disinterestedness of their representatives. The promulgation of the constitution was followed, on March 3rd, 1778, by the election of a legislature, which met for the first time on the 12th of the same month.

Efforts to obtain recognition from Congress and admittance to that body on the same footing as that on which the thirteen colonies stood were at once made. Naturally, New York made strenuous objections, and the hopes of the new state were not realized for the time. Yet Vermont bore an honorable part in the war, and but for her exposed position

would doubtless have contributed still more to the cause of the colonies. Occupying the highway from Canada to New York, the state was peculiarly liable to suffer from British depredations, to protect her from which nothing was done by the Continental army. Vermont was, in fact, left to shift for herself, and she did so by coquetting, through a few of her leaders, with the British commander in Canada. From the early fall of 1780 until the close of the war, this small coterie of leaders kept the British officer in the fond hope that the people of the section would repudiate the cause of independence and acknowledge the royal authority.¹ To the masterly skill of Ira Allen in conducting the negotiations of this episode is due their complete success. It was a delicate business, and was misunderstood at the time by the adherents of the colonies; but I cannot see wherein the slightest ground for suspicion of the motives entertained by Allen and his confederates is to be detected. Their course was one dictated by the instinct of self-preservation, and it accomplished its purpose remarkably well, without compromising the cause of either the settlers or the colonies.

The end of the war found the little state intact; but New York still claimed the territory, and there was a sufficient number of its partisans in the southeastern part of the state to cause serious disturbances. Moreover, a design had been under consideration between New Hampshire and New York of dividing the territory of Vermont between them. The wise and energetic policy of the Vermonters, however, was equal to these emergencies. Vermont throughout this period was a sovereign state, for its will was law. It had established a postal service, which connected at Albany with the service of the United States; it had au-

¹ For the facts of this notable incident of the war see the Haldimand correspondence, *Governor and Council of Vermont*, vol. ii, p. 396, and Ira Allen's *History of Vermont*.

thorized the coining of copper coins; it had fixed standards for weights and measures; it had passed a naturalization act, and it had come to an understanding with the Canadian government regarding commerce. Its sovereignty had been further asserted and tested in a more vital way: bills of credit to the amount of £24,155 were issued in 1781, and a year later were redeemed with scrupulous fidelity. The territory was now filling up with desirable settlers, and, on the whole, the people were well contented.

§ 6. *Admitted to the Union.* The advantages of being in the Union, however, were well understood, and the only obstacle to admittance was New York. When an element in the latter commonwealth (foremost among whom was Alexander Hamilton) at length manifested a disposition to recognize the fact that the territory east of Lake Champlain could not be retained, the Vermont people were ready to respond. In 1789 commissioners were appointed by the two governments to negotiate terms of settlement, on the basis of which New York would support the application of Vermont for recognition as a commonwealth of the Union. In 1790 the commissions agreed that Vermont should pay the sum of \$30,000 in Spanish silver as compensation to those who had purchased lands from the New York government, and this sum was to extinguish all rights under New York titles. Vermont appropriated the money in October of 1790. On January 10th, 1791, a convention adopted the Constitution of the United States, and on March 4th, of the same year, the state, by act of Congress, was admitted to the Union.

§ 7. *The Nature of the Controversy.* The time has passed for discussing the ethics of this struggle between New York and the settlers on the New Hampshire Grants. The event carried with it its own justification. The revolt from New York succeeded; that fact is sufficient proof that there was essential justice in the claims of the settlers. It was, in fact,

a struggle very similar to that which the colonies in union carried on with Great Britain. Legally, neither the colonies nor the settlers on the Grants could justify their positions and acts; but in both cases social forces were at work which burst the legal bands, in order to form new bands more suitable to the existing facts. While the people of the colonies, as a whole, were endeavoring to create a new state, through the promptings of a growing national consciousness, the settlers on the Grants were striving to secure for themselves a local government of the democratic type to which they had become accustomed in the New England colonies. Had the British government better understood the New England character, it would have allowed the government of New Hampshire to extend itself over the disputed territory. There is reason to believe that the king confirmed the jurisdiction of New York in the hope of repressing the democratic spirit.¹ A policy of repression was ill-adapted to any portion of the English-speaking inhabitants of America, and in seeming to adopt it toward the Vermont settlers, the king precipitated a struggle which perhaps would have been inevitable, even had greater discretion been shown by the New York governors as to the New Hampshire charters.

What the effect of the continuation of the government of the Grants by the province of New Hampshire would have been, is a subject for speculation, which would be less fruitful than interesting. Had one commonwealth of the Union instead of two resulted, it is possible that the people of Ver-

¹ In one of Lieutenant-Governor Colden's letters to the British board of trade, he says: "The New England governments are founded on republican principles, and these principles are zealously inculcated on their youth, in opposition to the principles of the constitution of Great Britain. The government of New York, on the contrary, is established, as near as may be, after the model of the English constitution. Can it be good policy to diminish the extent and jurisdiction in his Majesty's province of New York to extend the power and influence of the others?" *Colonial History of New York*, vol. vii, p. 565.

mont and New Hampshire would have secured an organ for local government, more suited to assist them in promoting their material prosperity and protecting personal rights than are two commonwealth governments. It is not to be denied that the smaller commonwealths labor under the load of a certain amount of particularism. But, whatever reasons may suggest themselves why the retention of Vermont by New Hampshire would have resulted happily for the people of both, it can hardly be admitted that the people of either New York or Vermont would have gained substantial benefit through a permanent extension of the New York line eastward to the Connecticut river. On the contrary, it must be said that both have profited by the separation—Vermont, by obtaining a government and legislation wholly acceptable, New York, by being relieved from a part of her too great governmental responsibility.

CHAPTER II. TAXATION UNDER NEW YORK.

§ 1. *Town Taxation.* The period from 1760 to 1777 may be called that of New York jurisdiction, although, as we have seen, the hold of that province on the Grants did not begin until 1765, and was wholly nominal after the war began. The controversy between the settlers and New York and the doubtful character of the titles bought from Governor Wentworth operated to discourage immigration, even before hostilities put a check to the freedom of movement existing in the colonies up to 1775. The towns were small, and were entirely devoted to agriculture. Taxation was almost exclusively for local purposes, and at first it was mainly in the form of levies on the proprietors' "rights" for the purpose of paying the cost of surveying the townships.¹ The proprietors' meetings were for a time more important than town meetings, which were authorized by the New Hampshire charters. These proprietors' meetings were held quite as frequently at some point in Massachusetts or Connecticut, where the proprietors were living, as in the townships granted by the charters. Gradually, however, the rights were sold, and a part of the proprietors themselves located in the townships.

Taxes were levied on the rights not only to pay for the

¹ Each town chartered by the New Hampshire governor was divided usually into sixty-eight rights. Five hundred acres, or two rights, in each township were retained by the thrifty governor, while one right each was given to the Society for the Propagation of the Gospel in Foreign Parts, to the Church of England for a glebe, to the town for the first settled minister, and to the town for the benefit of schools. The remaining rights went to the purchasers. See for the form of a New Hampshire charter, Z. Thompson's *Civil History of Vermont*, part ii, p. 224.

expense of surveys and other work connected with the division of the land, but many of the other needs of the communities were provided for in the same manner. Thus, in the record of a proprietors' meeting for the township of Middlebury, held in March, 1764, the following item¹ occurs:

Voted to raise 2s. on each right, and give the same to any man or men who shall, the ensuing summer, clear a cart road from the road last fall cut from Arlington to Crown Point, viz., from about ten to twelve miles beyond where No. 4 road crosses Otter creek; said road to be cleared on the east side of said creek, through the townships of Salisbury, Middlebury and New Haven.

The first proprietors' meeting in the township of Bennington of which a record now exists, held on February 11th, 1762, appointed a committee "to look out a place to set the meeting-house," and later the meeting-house was built, partly by individual contributions and partly by a tax on the proprietors.² Proprietors' meetings were frequent in all the townships for some years after settlements had been begun; but the towns were organized as soon as there was a sufficient number of inhabitants. Then occurred a transition of general local taxation to the town government. The action of the people of Bennington in reference to schools illustrates the tendency. In January, 1763, the proprietors voted a tax for building a school-house, but in the following April the inhabitants, in town meeting,³ taxed themselves to support schools "in three parts of the town."

The basis of town taxes in these early settlements is a subject for conjecture, as each town was free to choose its own method, and the local records give few hints upon the matter. Land was undoubtedly the main reliance, as it was in the

¹ Samuel Swift's *History of Middlebury*, p. 150. It does not appear that this road was ever cleared.

² Z. Thompson's *Gazetteer of Vermont*, p. 14.

³ *Ibid.*, p. 14.

proprietors' taxes.¹ In the rude condition in which all the towns were during this period, it is probable that there were very few taxes for general purposes.

§ 2. *Highway Labor.* One of the first acts of New York in reference to the Grants was "An Act for Laying out, Regulating and Keeping in Repair Common and Public Highways," passed in 1766, and intended particularly for Cumberland county.² By this act commissioners and surveyors were elected, and the inhabitants through or near whose lands the roads were run cleared and maintained them, under direction of the surveyors. The inhabitants were compelled to work "six Days in the Year, or so many Days as will be sufficient for keeping the said Roads in Repair, under the Penalty of Four Shillings for each Day every Person shall neglect or refuse such Service." The work of a team and a man to manage it was equal to three days' work of one man. Constables were authorized to levy by sale and distress on the property of persons neglecting to serve who also neglected to pay their fines. This act expired by limitation on January 1st, 1771, but a year later (February 26th, 1772,) it was revived and continued to February 1st, 1777. It became the model of the act passed a little later by the Vermont legislature, which existed without important modification of principle almost to the present time.

A similar act³ was passed for Charlotte county (in the northwestern part of the present commonwealth, immediately east of Lake Champlain) in March of 1772, and in 1773 the

¹ Bennington, among its first acts, voted "to send a petition to the General Court of New Hampshire to raise a tax on all the lands in Bennington, resident and non-resident, to build a meeting-house and school-house and mills, and for highways and bridges." The sanction of that province was not, however, regarded as necessary for the taxes imposed for these purposes.

² *Laws of New York*, Van Schaack's edition, 1691-1773, chap. mdccix, p. 487.

³ *Ibid.*, chap. mdclxxii, p. 702.

provisions of the act for Cumberland county were extended to Gloucester county, which lay to the north of Cumberland, on the east side of the mountains, and was at this time but thinly settled. The southwestern part of the Grants was in the "unlimited county of Albany," and its highways were supposed to be managed in accordance with a law similar to those for Cumberland and Charlotte counties. It was in this vicinity, however, that the opposition to officials commissioned by New York was strongest, and here the towns, as a matter of fact, did about as they pleased as to highways.

Highway taxes in the form of labor were the noticeable feature of contribution for the support of government during the New York regime. Good roads were greatly needed, and the energy of the communities, as political organizations, was directed chiefly to clearing and maintaining them. The New York government supplied for this work a system of administration, which, perfected by long years of experience in both England and this country, appealed to the good sense of the settlers. For this at least the inhabitants of the Grants had reason to be grateful to their far-off rulers.

§ 3. *County Taxation.* The earliest act authorizing a tax for the Grants not payable in labor was that of 1772,¹ for erecting "a more convenient court house and goal" for Cumberland county. This act made provision for the election of supervisors and other officers. The supervisors were authorized to

raise, levy and collect upon and from the Freeholders and Inhabitants of the said County a Sum not exceeding Two Hundred and Fifty Pounds, to be applied towards the erecting and building such Court House and Goal, in and for the said County, and that the same shall be raised, levied and collected in the same Manner as the necessary and contingent Charges of other counties of this Colony are by Law directed to be raised and levied.

¹*Laws of New York*, Van Schaack's edition, 1691-1773, chap. mdxi, p. 700.

The New York practice was for the supervisors to estimate the expense of the county and to transmit to the town officers the proportion for each town. The tax was then levied on the general property of the inhabitants. It was essentially the same system that is still in vogue in that commonwealth for levying county charges.¹ The act also provided for the annual election thereafter, on the third Tuesday of May, by the freeholders and inhabitants of the towns and districts, of supervisors, assessors, collectors and a county treasurer. Section 5 made this general provision for future county charges:

That the public and necessary Charges of the said County of Cumberland shall be raised, levied and defrayed in the same manner as the public and necessary Charges of the other Counties of the said Colony are by them directed to be raised and defrayed.

At the same session of the Assembly an act was passed extending to Charlotte county the general laws of the province regarding taxation.² Cumberland and Charlotte counties were thus placed on the same footing as to taxation with the other counties of New York. Gloucester county was too sparsely settled to need a special act. The tax of £250 for erecting the Cumberland county court-house proved to be insufficient, and an additional levy of £250 was authorized in 1773.³

That the people were somewhat backward in complying with the laws relating to all county charges is indicated by a law of the following year (1774) authorizing justices of the peace, in case a town or district failed to choose a supervisor, assessors or collectors at the proper time, to nominate such officers to the county court. Persons thus nominated were

¹ See J. C. Schwab's *General Property Tax in New York*, pp. 50-65.

² *Laws of New York*, Van Schaack's edition, 1691-1773, chap. mdlxii, p. 705.

³ *Ibid.*, p. 803.

obliged to serve or pay a penalty of £10. Such a tendency would be characteristic to a certain extent of a newly-settled section under any circumstances, but in the Grants the strained relations with the New York government undoubtedly aggravated it.¹

§ 4. *Resumé of the New York Period.* To sum up the history of the Grants previous to the formal declaration of independence by the inhabitants, it may be said that at first local expenses were met by levies on the township rights; later it is probable that the taxes were imposed on the inhabitants in proportion to their property, of which land was the main element, although, in the absence of recognized law, no rule but that of convenience was followed; later still, in those parts of the Grants which accepted New York jurisdiction, the special acts for the counties regarding the making and maintaining of highways were looked to as governing that important subject; two special taxes of £250 each were raised on the property of the inhabitants of Cumberland county for building a court-house, and finally the general laws of New York for imposing county taxes on general property were applied to Cumberland and Charlotte counties.

As to quit-rents, New York probably received very little from the people of the Grants, as a report² on the province made to the British government in 1767 contained this rather despondent statement:

The owners of Lands in this Province have ever been so backward in the payment of their Quit Rents that the sum collected annually has never been sufficient to pay off the above mentioned salaries,

¹ B. H. Hall, in his *History of Eastern Vermont* (p. 195), says: "The laws passed by the New York legislature for the benefit of Cumberland county, although wisely planned, were not readily executed. Where a direct and palpable benefit was to ensue from their observance they were obeyed, but when any one chose to break them his disobedience was but little regarded, and was still more rarely punished."

² London document no. 40, in *Documentary History of New York*, vol. i, p. 705.

and some other orders which were formerly granted to different people, by the Lords of the Treasury.

The salaries mentioned amounted to £460, with five per cent. on the sums audited, and a few other charges. If the quit-rents of the whole province were insufficient to pay this sum, it is fair to infer, in view of the distance from the seat of authority, and the open dislike of the inhabitants to New York officials, that the portion derived from the Grants was altogether insignificant. The arrearages in quit-rents throughout the province at this time were £18,888 16s. 10d.¹ The rents, if any were received from the Grants, would come only from holders of New York charters, and the number of these among the actual settlers was comparatively small.

¹ *Documentary History of New York*, vol. i, p. 705. The following extract from the report of a committee of the New York constitutional convention of 1777 on matters relating to the Grants would indicate that the quit-rents were in a measure burdensome to the settlers. It is probable, however, that the latter were ready to make as much political capital as possible out of an exaction which, it is true, was odious to them in principle, but to which they paid very little attention. The report said: "The fourth general inconvenience which furnishes the broadest ground of clamor and complaint is the exaction of heavy *quit-rents* for the lands within said counties of Cumberland and Gloucester, which they consider an innovation upon the rights of mankind, for whose use such lands were given by a bountiful Providence without reservation, and which ought not, in their opinion, to be charged with taxes, other than for the general support and defence of the state and government." Notwithstanding these complaints, the new government of New York recognized the legality of quit-rents as they existed under the provincial government.

CHAPTER III. THE VERMONT CONSTITUTION.

§ 1. *Its Origin.* The constitution of Vermont, drafted in 1777, and put into force early in the following year, was based on that of Pennsylvania, which was adopted in 1776. The latter, which had its origin in the "Frame of Government" granted by William Penn, by the authority of Charles II, in 1682, had been recommended to the people of the Grants by Dr. Thomas Young, a citizen of Pennsylvania, who took a lively interest in the struggle against New York. Ira Allen had a leading hand in the revision of the Pennsylvania document.¹

§ 2. *References to Revenue.* The references to revenue in the Pennsylvania document were transferred bodily to the Vermont constitution. One of these was Article VIII of the Declaration of Rights,² which became Article IX of the Vermont declaration; and the forty-first section of the constitution proper of Pennsylvania became the thirty-seventh section of Part II of the Vermont constitution. The first read as follows:

That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives; nor can any man who is conscientiously scrupulous of bearing arms be justly compelled thereto, if he will pay such

¹ *Governor and Council*, vol. i, p. 83.

² *Poore's Charters and Constitutions*, vol. ii, p. 1541.

equivalent ; nor are the people bound by any law but such as they have in like manner assented to, for their common good.

Section 37¹ was :

No public tax, custom or contribution shall be imposed upon, or paid by, the people of this state, except by a law for that purpose ; and previous to any law being made to raise a tax, the purposes for which it is to be raised ought to appear evident to the Legislature to be of more service to the community than the money would be if not collected ; which being well observed taxes can never become burthens.

Section 30 of the Vermont constitution, also taken bodily from that of Pennsylvania, was in these words :

All fines, license money, fees and forfeitures shall be paid according to the direction hereafter to be made by the General Assembly.

A peculiar department of the government established, on the Pennsylvania model, by the original constitution of 1777 and continued until abandoned in 1870, was the Council of Censors, composed of thirteen members chosen by the people once in seven years, whose chief duty was "to inquire whether the constitution has been preserved inviolate in every part," and to call constitutional conventions when they thought proper. "They are also to inquire," continues the article, "whether the public taxes have been justly laid and collected in all parts of this commonwealth—in what manner the public moneys have been disposed of—and whether the laws have been duly executed." The Censors were thus a department of criticism, differing little in this respect from the judiciary, except that the Council was enjoined to take the initiative in pointing out unconstitutional acts. Unlike the judiciary, however, the Council had no power to enforce its conclusions. It was in its nature very much like the railroad commissions of recent years—notably that of Massachusetts—whose function has been to lay bare to the public gaze

¹ *Governor and Council*, vol. i, p. 102.

abuses of trust by railroad corporations. It is highly probable that the Council of Censors did the commonwealth a service which was more real than apparent. It at least left a record of the constitutional progress of the people, and in its reports are some valuable hints respecting the financial history of nearly a century.

§ 3. *Amendments.* All the above references to the subject of revenue were taken from the Pennsylvania constitution without verbal change. The provisions embodied in them caused no dissatisfaction, and when the constitution was remodeled, in 1786, they were all retained except that referring to fines, license money, etc. The revision, however, made a number of changes in arrangement and phraseology. Section 37 of Part II was united with Article 9 of the Declaration of Rights, and the last clause of the section, beginning with the words "which being well observed," was dropped, doubtless on account of its superfluous nature. In place of the words "of his legal representatives," was now used the phrase "of the representative body of freemen." In this revision there was also an additional provision regarding taxation, namely, that of Section 9 of Part II, which runs as follows: "The representatives so chosen (a majority of whom shall constitute a quorum for transacting any other business than raising a state tax, for which two-thirds of the members elected shall be present) shall meet on the second Thursday of the succeeding October," etc. This section was afterwards extensively amended, but the provision that two-thirds of the members constitute a quorum for voting commonwealth taxes was retained. Two legislative branches were substituted for one by the third article of amendment, adopted in 1836, and the following provision was included in the amendment: "That all revenue bills shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other

bills." The clause is a striking illustration of the persistence of principles of political science long after the conditions which gave them birth have departed. The reason why the origination of bills of revenue should be confined in the British parliament to the lower house is obvious; in the commonwealths of the United States, in which each of the legislative branches is directly elected by popular suffrage, it has no existence in facts.

§ 4. *Theories of Taxation.* Article IX of the Declaration of Rights contains the theory of taxation adopted. It is the "exchange" or "protective" theory. A member of society is protected in "the enjoyment of life, liberty and property;" therefore he is bound to contribute his proportion toward the expense. The article has been construed to justify a poll-tax as a contribution for the protection of life and liberty, and a property tax for the protection of property.¹ That this theory was accepted without question when the constitutions of Pennsylvania and Vermont were adopted, was quite natural. It was a part of the prevailing social contract theory of the state, which reduced the functions of the latter to the simple task of suppressing violence and fraud.

The concluding clause of Section 37, in which it is asserted that the purposes for which taxes are raised "ought to appear evident to the legislature to be of more service to the community than the money would be if not collected," was hardly intended by the framers of the constitution to be a contradiction of the exchange theory, yet in substance it is. It expresses concisely the generally accepted modern theory of taxation—that the justifiable purposes are any social wants felt in common by the members of a community. The presence of this supplementary theory in the

¹ *Journal of Council of Censors*, 1869; report of committee on taxes and expenditures, p. 36.

constitution, has probably operated to secure for the taxing power a liberal judicial interpretation.¹

¹The constitutionality of special assessments was affirmed in the case of *Allen vs. Drew*, 44 Vt., 174. Such assessments were declared to be not under the right of eminent domain, but in "the exercise of the right of taxation inherent in every sovereign state." In *Barnes vs. Dwyer*, 55 Vt., 469, it was held that special assessments levied by city or village authorities "for so much of the expense thereof [sidewalks] as they *shall deem just and equitable*," was unconstitutional because there was no fixed standard for the assessments. The court (Veazey, J.) held that all assessments must be strictly in proportion to benefits received. On taxes for aiding railroads see *Town of Bennington vs. Park et al.*, 50 Vt., 178.

CHAPTER IV. THE GRAND LIST.

§ 1. *The Basis of Taxation.* Almost the entire revenue of Vermont, commonwealth and local, has, from the first, been derived from taxes levied on the "grand list," the leading element of which has been general property. This chapter must therefore virtually be an examination of the general property tax as it has appeared in an essentially rural community for the space of over one hundred years. Without prejudging the case, but with the purpose of stating in advance what will appear further on from the facts themselves, it may be said that, however excellent general property may be as a theoretical measure of ability to contribute to the public treasury, practically it has been found to be very defective in Vermont. The history of the grand list will be seen to bristle with attempts—for the most part unsuccessful—to bring to light certain kinds of property which in their nature are easily concealed and are therefore convenient subjects for evasion. In this respect the experience of the commonwealth has been different from that of other commonwealths only in being less pronounced than in some, on account of the absence of large cities, in which, as is well known, opportunities for avoiding personal property taxes are greater than elsewhere.

§ 2. *The Act of 1778.* This was the first act aimed at securing an appraisal of property for purposes of taxation after the state's independence had been declared.¹ It was called

¹ *Laws of Vermont*, 1779, p. 295, of Slade's *State Papers*. No copy of the laws of 1778 is known to be in existence. The laws of that year of a permanent character were embodied in the printed copy of those of 1779.

"An Act Directing Listers in their Office and Duty." That it found its model in the laws of Connecticut is quite evident;¹ indeed, the "Connecticut law book" was the source whence the early legislators drew the greater share of their legal wisdom—a fact not in the least surprising when we remember that Connecticut had been the former home of the leading men of the new state. Springing full grown from the head of the Connecticut law, it removed the necessity of adopting tentative acts of taxation, and, through mistakes and costly experience, of building up an acceptable system. The Connecticut laws were perfectly familiar to the greater part of the inhabitants of Vermont, and the social life of the latter was so much like that of Connecticut that they fitted the younger community nearly as well as the older.

The law was a listing system. Under its provisions the listers warned the inhabitants some time in May annually, to give in writing "a true account of all their listable polls, and all their rateable estate," belonging to them on June 20th, "particularly mentioning therein all such things as are in [this] act hereafter expressly valued." The lists were signed and given to the listers by July 10th. The listers had power to add to the lists, according to their judgment, a value for the articles not expressly valued. From August 10th until September 25th they went over the combined list carefully, and the "polls and rateable estate" not appearing in it were fourfolded and added. The burden of proof that the property thus assessed did not belong to a person on June 20th was on that person. The fourfolding process was also applied to the ratable estate and polls of persons who had given in no lists. To put vigor into this part of the administration, it was provided that one-half of the amount arising from these fourfolds should go to the listers, for whom exe-

¹ All the features of the Connecticut system, including the poll and "faculty" taxes, were adopted by Vermont.

cutions were granted in case of refusal by the collectors to turn over the money; and in case the collectors had no estate their bodies were held until the money was produced. The listers were commanded to grant relief to persons "overcharged in their lists," when the property in question did not belong to the persons on June 20th, or when it was left out of the list by accident. In case the listers did not consider the applicant worthy of relief, an appeal to a board, consisting of an assistant, or a justice of the peace, and two selectmen, could be taken. This board could grant "such relief as they shall judge just and agreeable to this act," but to secure legality to the proceedings it was necessary that two or more of the listers be notified to be present at the meeting. If the listers neglected to demand of any person his list within the legal time, they were permitted to demand it before September 20th; and in case of neglect to return the list within five days, they made up a list to the best of their judgment, and from their decision in such cases there could be no appeal.

Specific rates at which the greater part of the various elements making up the grand list were to be entered were provided. All male persons between the ages of sixteen and sixty years, except ministers, the president and tutors of the state college, "annual school-masters," and students until the time for taking their second degree, were rated at £6, but provision was made for relieving from taxes persons incapacitated by sickness or otherwise. The ratable estate was "set in the list" at these rates: Every ox or steer four years old or over, £4; every steer or heifer of three years, and every cow, £3; every steer or heifer of two years, £2; every steer or heifer of one year, £1; every horse or mare of three years or over, £3; all "horse kind" of two years, £2 each; all horse kind of one year, £1 each; all swine of one year or more, £1 each. Persons having money on hand or due to

them "over and above all debts charged thereon," were required to enter it at the rate of £6 for every £100, and whenever "the listers shall suspect any person has not given in the full sum of money on hand, or due as aforesaid, the listers are hereby empowered to call each person or persons before them, there to give in such lists on oath." The oath thus was administered only in case of suspicion that too small an amount had been returned, and it was used only in reference to money on hand or due. The declaration under oath was conclusive. Land which had been improved one year, either for pasturage, mowing or plowing, or was stocked with grass, and which was enclosed, was listed at ten shillings per acre. Ministers and the president of the college were not only exempted from being listed for their polls, but they also enjoyed the same immunity as to their entire estate situated in the towns in which they resided.¹ Lands sequestered for schools "and other pious uses," also, were exempted. Attorneys-at-law were set in the list "for their faculty," those having the least practice at £50, and the others in proportion, "according to their practice." The listers were given full discretion in estimating the extent of the practice. All "tradesmen, traders, and artificers" were rated in the list "proportionably to their gains and returns." A clause in the act commanded the listers to rate "warehouses, shops, work-houses and mills, where the owners have particular improvement or advantage thereof," according to their judgment and discretion. The oath which all officers were obliged to take made the listers promise to "faithfully execute the office" and "do equal right and justice to all men." The total of the list was returned to the

¹ At this time no state college had been established; the provision for the exemption of its officers was made in the expectation, entertained even at that early and troublous time, of founding a state university. It was not until 1791 that the institution was chartered, and it did not receive students until 1800.

General Assembly each year, and towns failing to make returns were subject to doomage.

The act, it will be seen, was a close approximation to the general property principle, although the various kinds of property were specifically valued. The improved land alone was included in the list, for that alone had much value. Ordinary buildings, as dwelling-houses and farm-buildings, and tools, etc., were not included, and these were about the only exceptions in the nature of property generally owned in Vermont. Business buildings, from which an income could be expected, were particularly mentioned, and horses and cattle were carefully entered. Intangible personal property in the shape of money and debts due, after deductions for debts owed, was also included. Polls were listed, of course; they were a prominent feature of taxation in New England. The noteworthy element of the list was the income tax on attorneys, who were expressly called upon to contribute to the public fund in proportion to their faculty. The same principle was applied to traders and mechanics, whose "gains and returns" were taken as an indication of their faculty.¹

¹ In its address to the people in 1786, the Council of Censors made the following vigorous but futile protest against the income tax: "But in apportioning the tax, this Council does not believe full justice has been done; all our towns are new, and a part of the most populous ones still uncultivated;—tradesmen of all kinds and men of genius are every where much wanted:—it must not certainly be therefore as 'good guardians of the people' that *faculties are rated, and unimproved real property, and articles of luxury, left without assessment.* In the opinion of this Council, visible property, in proportion to the real value, is the only fit subject for taxation (except the Legislature shall find it expedient to impose a small tax on polls, not minors, for personal protection); and every deviation from this rule, whether to exculpate one class of men, or to harrass another, is an error in government, and ought to be exploded [in] our future system of taxation." The inference is that the exemption of unimproved land from taxation was regarded as a piece of special legislation in the interest of land speculators. There was a strong sentiment at this time in favor of taxing such lands. If the "articles of luxury" referred to as exempt from listing were carriages, clocks, etc., the alleged injustice was corrected a few years later.

Such was the listing law adopted by the first legislature. It was well fitted for the existing conditions. Vermont at this time was a primitive community, possessing but a limited amount of wealth, and that mainly in the form of land and the appurtenances necessary for its cultivation—cattle, horses, etc. The general stock of property was tangible, almost the exact quantity owned by each person was known by his neighbors, and consequently there could be no evasion. Taxation on this mass of general property was just taxation, for it was founded on ability to pay. As General Walker says,¹ the New England people of the old stock were a saving people. Whatever was earned, beyond the necessities of life, was turned into property, and presumably the most remunerative kind of property. Property thus became an index of ability, and as such formed a just basis of taxation. Had it remained possible to ascertain, with reasonable certainty, the amount of property possessed by each person, the general property tax would have continued to form a just basis much longer than it did. But that was possible only in a community in which, as in Vermont at this time, all property, speaking roughly, was tangible and visible. As property in large part becomes differentiated into its more elusive forms, the general property tax is seen to enter upon the stage of weakness. The experience of Europe is certain to be repeated.² While Vermont retained the primitive character of a community struggling with few resources to conquer a wilderness, this tax was excellently adapted to its needs; when wealth took on new forms, its failure was as inevitable as it had been in Europe. Even at this time, poor as the state was, the general property tax was hardly regarded as all sufficient, and the "faculty tax"

¹ *The Bases of Taxation*, POLITICAL SCIENCE QUARTERLY, vol. iii (1888), p. 6.

² For a history of the general property tax in Europe, see Professor Seligman's *General Property Tax*, POLITICAL SCIENCE QUARTERLY, vol. v (1890), p. 43.

was invoked to reach the few who reckoned on their wits rather than their property for an income. In so far as the "faculty tax" became important, it was an arraignment of the inadequacy of the general property tax. But it was not important at first; its *raison d'être* was the fact that Connecticut, older and richer than Vermont, had it on her statute-book. General property and polls were the real bases of taxation in Vermont.

The law of 1778 formed the starting-point of the legislation of the succeeding forty years, and the revisions and amendments of that period have little significance aside from the light they shed upon the practical working of the law. Some reference to a few of the changes will, however, be necessary to indicate the trend of the legislation. Thus, in 1787, the rates at which different classes of property were listed were revised, and money on hand and debts due were placed at £20 for every £100.¹ At the same time the polls of the militia were exempted from listing. A deduction from the list for shorn wool and linen and towel cloth manufactured was allowed for a time, but in 1789 the provision was repealed.² In this year orchards of apple trees having not less than forty trees were exempted from taxation for twelve years.³ In 1791 the ages between which male persons were listed on their polls were fixed at twenty-one and sixty, instead of sixteen and sixty.⁴ Listable land from this time on was to be improved for two years, instead of one. In the same year (1791) attorneys were listed as traders and artificers had been—"proportionable to their gains, according to the best judgment and discretion of the listers"—the change consisting in discarding the minimum of £50. In 1795 it was provided that towns not represented in the As-

¹ *Laws*, 1787, p. 8.

² *Ibid.*, 1789, p. 18.

³ *Ibid.*, p. 6.

⁴ *Ibid.*, 1791, p. 266.

sembly, and having a list of less than \$3330, were not to be included in the commonwealth list.¹

A notable revision was made in 1797.² The rates adopted for the elements included in the act of 1787 were substantially the same, although now expressed in dollars and cents, instead of pounds and shillings. Polls were listed at \$20 each, and improved lands at \$1.75 per acre. Oxen of four years and over were put down at \$10, instead of £3, and the other ages and varieties of cattle, etc., were rated accordingly. Money on hand and debts due were set at \$6 for every \$100. This was a return to the original law. "All licensed attornies, practitioners of physic or surgery, merchants, traders, owners of mills, mechanics, and all other persons who gain a livelihood by buying, selling or exchanging, or by other traffic not in the regular channel of mercantile life," were listed in proportion to their returns. It will be observed that the income idea was thus enlarged to suit the growing and diversifying business of the community. The catalogue of ratable estate, also, was enlarged by this act. Thus, section 2 provided that dwelling-houses, stores and shops valued at \$1000 or under, and occupied or rented, be listed at two per cent. of their real value, and the same kinds of buildings valued at over \$1000 at three per cent. The list of farm animals now included mules and jackasses. House clocks not made of wood were listed at \$10; gold watches at \$10, and other watches at \$5.

Other changes made in the next few years were the following: In 1801 a deduction of \$1 was made for every sheep, not exceeding twenty in number, shorn between May 10th and June 20th each year.³ At the same time all persons were commanded to return to the listers the total number of sheep shorn each year. In 1802 it was enacted that

¹ *Laws*, 1795, p. 42. ² *Ibid.*, compilation of 1797, p. 565. ³ *Ibid.*, 1801, p. 43.

the listers place in the list "every pleasurable carriage, wag-gons with spring seats excepted," at fifty per cent. of its real value, as estimated by themselves.¹ The rate was reduced to twelve per cent. in 1813.² An act of 1807 made the exemption of the polls of members of the militia from local taxes conditional on proper equipment, and officers, as well as the rank and file, were exempted.³

A significant act was that of 1809, by which it was sought to turn the screws down a little more tightly in respect to intangible personal property.⁴ The reference to the latter in the act of 1797 had been brief; it was simply provided that money on hand and debts due, over and above obligations from the person, be set in the list at \$6 for every \$100. Now, however, the language of the statute became more specific and exacting. Persons having "money on hand, or money due, or obligations payable in money or cattle, or any kind or species of property (whether such obligations have become due or are payable at a future day) over and above the debts due from such person, shall have the same set in the list at the rate of six dollars for every hundred dollars." Such property was to be returned to the listers by all persons possessing it, and those neglecting to return the full ratable amount in their lists were assessed by the listers "in such sum as in their opinion would be equal to six per cent. on the amount such person has neglected to insert in his list." Those thus arbitrarily assessed received notification of the amount and were allowed a hearing by the listers if they felt themselves unjustly assessed. If they were not satisfied with the decision of the listers, an appeal could be taken to a justice of the peace and two or more selectmen; but when such an appeal was taken, it was necessary for the "ag-

¹ *Laws*, 1802, chap. lxvii, p. 113.

² *Ibid.*, 1807, chap. lxxxiv, p. 106.

³ *Ibid.*, 1813, chap. xc, p. 129.

⁴ *Ibid.*, 1809, chap. xlv, p. 41.

grieved" person to take an oath before the justice as to "the amount of money on hand, or due, and of obligations over and above what is due or owing from him." This act also provided that all property owned out of the commonwealth by listable persons be set in their lists.

A further piece of evidence that there existed at this time a disposition on the part of the taxpayers to avoid returning personal property is found in an act of 1811.¹ It prescribed for the printed form which had been used for making returns since 1797, a detailed statement of every item of property mentioned in that act. The form in use after 1797 had grouped cattle, horses, clocks, watches, money on hand, and assessments of attorneys, physicians, merchants, mechanics, etc., under the head of "other property and assessments." That this grouping had given rise to dissatisfaction, may be inferred from the change. The act also authorized a deduction from the lists of "parents, masters and guardians" of \$20 for each minor equipped for military duty, and if the minor was a cavalryman, a further deduction of \$13.50 for a horse was made. Musicians who were properly equipped were allowed the same exemption as had been accorded to officers and privates. An act of 1817² reveals a propensity of human nature which had become noticeable in the preceding years. Referring to the deductions from the lists of parents, guardians and masters for military duty, it says that no deduction shall be made until it has been proved to the satisfaction of the listers, that the equipments were the personal property of the parent, guardian or master, "and not borrowed for the express purpose of inspection." The discretionary power of the listers was complete on this point.

§ 3. *The Acts of 1819, 1820 and 1825.* The war of 1812 marked the beginning of a new era in the industrial life of the nation. Manufacturing had received a great impulse

¹ *Laws*, 1811, chap. cxii, p. 137.

² *Ibid.*, 1817, chap. cxxx, p. 114.

through the hard necessities of the war, and industry was taking on a more varied form. Vermont shared to some extent in the change, and her hitherto exclusively agricultural character was sensibly modified. Moreover, the still greater industrial activity of the neighboring commonwealths of New Hampshire and Massachusetts affected her agricultural interests very favorably by affording constantly enlarging markets. It was a time, on the whole, of general progress and prosperity. It was inevitable, under these conditions, that more attention should be directed to the subject of taxation. A system which had undergone slight amendment since its adoption during the struggles against New York and Great Britain, could hardly be fully adapted to circumstances which, if not radically different from those of the first twenty-five years of the commonwealth's existence, were yet not the same.

This fact was clearly recognized soon after the war, and led to a series of acts relating to the grand list, the first of which was that of 1819.¹ Now for the first time triennial appraisals of all real estate but unimproved land were required. The former practice of listing improved land by the acre was thus definitely abandoned. In the work of appraisal three classes of real estate were distinguished. One included dwelling-houses, out-buildings, and lots of not over two acres, which were appraised at their value, "with due regard to the situation and income thereof," and listed at four per cent. Improved land formed the second class, and was listed at eight per cent. of its valuation. Mills, stores, distilleries, and all buildings used for manufacturing, were entered as the third class, at six per cent. Appeals from the listers' valuation could be made to the selectmen. Unimportant changes were made at this time in the rates at which cattle and horses were listed. This, as well as all the

¹ *Laws*, 1819, chap. i, p. 3.

preceding acts, provided that if the listers failed to make proper returns to the General Assembly, the towns were liable to be doomed to pay the amount due. An act of the same year¹ repealed all former acts exempting the estate of clergymen from being placed in the list.

In 1820 further changes were made in the law.² Thus, dwelling-houses, etc., were now listed at six per cent. The rates for cattle and horses were lowered to about two-thirds of those existing for the previous thirty years.³ The most important provision of this act, however, was that ordering county conventions of town listers, for the purpose of equalizing the appraisals of real estate. This was the first act in Vermont authorizing equalizing boards, but from that time until 1882 they were a prominent element of the mechanism of taxation. Section 6 provided that a lister be elected by the listers of each town to attend the county

¹ *Laws*, 1819, chap. xiv, p. 26.

² *Ibid.*, 1820, chap. i, p. 4.

³ The rates at which different varieties of personal property were listed after 1819 were as follows:

	1819.	1820.	1825.
Ox, bull, steer, 4 yrs. and over.....	\$10.00 ^a	\$5.00	\$2.00
Bull, steer, cow, heifer, 3 yrs	6.00	3.00	1.25
Bull, steer, heifer, 2 yrs.....	5.00	2.00	.75
Horse, mare, mule, worth \$25 or less.....	14.00 ^b	8.00 ^b	1.00
Horse, mare, mule, worth \$25 to \$75.....	.....	.....	3.00
Horse, mare, mule, worth over \$75.....	.....	.....	6.00
Horse, mule, 2 yrs	7.00	4.00	2.00
Horse, mule, 1 yr.....	4.00	3.00	1.25
Stallion, 4 yrs. and over	150.00	150.00	75.00
Stallion, 3 yrs	50.00	50.00	30.00
Jackass	30.00	30.00	40.00
Sheep.....	.....	.....	.10
Brass clock or watch.....	10.00	10.00	3.00
Gold watch.....	10.00	10.00	4.00
Other watch	5.00	5.00	1.00

^a Oxen alone were placed at \$10. Other kinds of cattle over three years old were at \$6.

^b No classification as to value.

meeting, which was held on the third Tuesday of the following September (in 1821), and thereafter triennially. It was specifically stated in the act that county taxes must be assessed on the corrected lists; town taxes could be assessed on the original lists. A further equalization, between the counties, was made by a committee of the General Assembly, consisting of one member from each county. This equalization, in the language of the statute, was to "render the estimation and valuation of such real estate, in the said several counties, just and equitable." An act of 1823 made it obligatory to assess all taxes in the list as corrected by the equalizing committee of the General Assembly.¹

But the patching process proved inadequate. The appraisal of real estate had been reduced to a fairly satisfactory status, but there still remained the troublesome questions of money on hand and debts, and of the income of attorneys, physicians, merchants, mechanics, etc. On these rocks the old law, with all its amendments, had split. In 1822 the General Assembly doomed some twenty or thirty towns, and in the following year about the same number felt the stern sentence of the "wisdom and virtue" of the commonwealth. The Council of Censors voiced the general sentiment by declaring:

We find that, although attempts have from time to time been made to equalize taxation, still it is to be feared that complaints are justly made, both as to the equality of the mode of assessment and as to the uniformity of the execution of the laws on this subject.

The dissatisfaction at length led, in 1825, to a revision and consolidation of the listing laws.²

The act of this year was the most elaborate and comprehensive law that had been enacted since the birth of the commonwealth. While being a growth on all the acts which

¹ *Laws*, 1823, chap. xxiii, p. 20.

² *Ibid.*, 1825, chap. ix, p. 10.

had preceded it, it contained several new features, and in its minutiae it was thorough-going. Its operation may be summarized as follows: Males between twenty-one and sixty years were listed at \$10 each on their polls in the towns in which they resided on April 1st. The exceptions to this provision were college students, sick persons (at the discretion of the listers), and persons subject to military duty. The last-named class was wholly exempt from commonwealth poll taxes, while those who were properly equipped were exempt from all except highway taxes,¹ and a further deduction of \$3 was made for each cavalryman's horse. Deductions of \$10 were made from the lists of parents, guardians and masters for each minor equipped for the infantry service or a band, and of \$13 for each minor equipped for the cavalry. The usual exemption of lands "sequestered and improved for schools and other publick, pious and charitable uses," was made. Real and personal property in the hands of tenants was placed in the lists of both owner and tenant, who were jointly and severally liable for the taxes.²

The rates for personal property were less than one-half their former average. Money on hand on April 1st and debts of all kinds above those due from the person were listed at \$6 for each \$100. Bank and insurance stock was

¹ This was construed in 1828 to apply only to highway taxes payable in labor. *Laws*, 1828, chap. viii, p. 7. The militia law of 1829 made the exemption extend to taxes, except those for making and repairing highways and bridges, whether payable in money or labor, and those for the support of schools. There were numerous changes of policy in reference to militia exemptions, justifying, it would seem, the remark of the Council of Censors in its address of 1835 in advocacy of two legislative branches: "That legislation has been fluctuating, hasty, and improvident, and unnecessarily multiplied, will be apparent to any one who will look into the statutes; else, why so many *additional, amendatory, explanatory*, and *repealing* acts, in continued succession, with which our statutes abound, if those acts had been providently and deliberately passed?"

² The provision referred only to natural persons. Congregational Society of Poultney *vs.* Ashley, *et al.*, 10 Vt., 241.

rated at \$3 for each \$100 paid in.¹ Here was the first reference in the grand list laws to stock in corporations. The listers were given authority to place the amount of intangible property at what they believed to be the actual value, in case they had reason to suppose less than the true amount had been returned. Their power was thus made practically unlimited, so long as they acted with "common care, skill and prudence." Attorneys, physicians and surgeons were now listed at not less than \$10 nor more than \$300, "according to their respective gains." Merchants and traders were set down for at least \$15, and from that figure up to \$600, "in proportion to their several gains, taking into consideration the capital employed in said business." Mechanics and manufacturers, also, were listed on the income principle, at an amount not exceeding \$100, "according to the best discretion and judgment of the listers." The change in practice as to incomes consisted in the revival of minimum assessments. This and the unlimited power given to listers in listing intangible personalty were relied upon to correct the deficiencies of the former laws.

Mills, stores, distilleries, furnaces, etc., were listed at six per cent. of their value.² Other real estate, also, except unimproved land and building lots of two acres or less, was listed at six per cent.; and building lots not exceeding two acres, with the buildings, at four per cent. Thus there were now but two distinct classes of real estate, instead of the three established by the law of 1819. Appraisals from this time on were once in five years.

The listers were compelled to post notifications in due

¹ Foreign bank and insurance stock was exempted in the following year. *Laws*, 1826, chap. xx, p. 12.

² Wharves and storehouses were listed at the same rate in the lists of the towns adjoining. Those located on the waters of Lake Champlain were outside the town limits; hence the special provision.

season, calling upon all persons to return to them by May 1st, true lists of taxable property possessed on April 1st, and failure to comply with this requirement involved an application of twofolding. If no list was returned, the listers made out a list on their own judgment. A list of the property appraised and assessed was lodged in the town clerk's office by June 20th, for the inspection of the persons assessed. The selectmen, as a board of relief, had power, except in the cases of money on hand and debts, and of bank and insurance stock, to make examinations and reduce assessments. For persons who thought themselves over-assessed for money on hand, bank and insurance stock, etc., the process of attaining relief was more simple. It consisted in making a written disclosure to the selectmen, one of whom administered an oath to the effect that the disclosure was "true and faithful," according to the best judgment and knowledge of the oath-taker. This declaration was final; the selectmen acted in a purely ministerial capacity. In case listers failed to return their lists to the General Assembly or to insert what appeared to the Assembly to be a sufficient amount of money on hand and bank and insurance stock, the Assembly could doom the town to any amount. County equalizing conventions of listers were held on quinquennial years, and the averaging committee of the Assembly equalized the returns for real estate between the counties.

The significant changes effected in the character of the grand list by these revisions were two. One removed farming land from the group of property listed at fixed valuations, and put it upon the basis of estimated value. The other provided new resources to the listers for reaching the intangible personalty. The first was clearly an advance on the former practice. Undoubtedly fixed valuations for improved land worked little or no injustice during the

earlier years, when land was plenty and had a comparatively low value. The slight differences in value were hardly worth considering in preparing a grand list. But forty years had brought in their train numerous improvements inseparably connected with the land, and there was the "unearned increment" which a fortunate choice of location had added. It was time for the criterion of primitive agricultural life to give place to one adapted to settled agriculture and growing manufacturing.

Equally creditable to the motives of the legislators, but less defensible on the score of expediency, was the attempt to reach intangible personalty. Given the general property tax as the basis of revenue, there could be no thought of permitting any form of property to escape the listers. The problem appeared to be wholly one of means to an end. How could the owners of property be induced to disclose the total of their taxable property? There was but one answer: Voluntary disclosure had signally failed: rigid and "inquisitorial" methods must be adopted. The event has since demonstrated the futility of the effort, but the law-makers of the day could hardly be expected to have foreseen it. They were committing the mistake which, it is true, had been committed many times before, but which had never been so pronounced as it was destined to be in the highly industrial and commercial era which came to maturity only with the close of the Civil War.

The act of 1825 continued in force until 1841, with frequent amendments of greater or less importance. A change in the form of the oath compelled a person disclosing as to his money on hand, etc., to state that the property or obligations disclosed were in his possession on April 1st. In 1831 the listers were ordered to list stock owned in banks located out of the commonwealth at the discriminating rate of three per cent. of its market value, which was to be ascertained by

oath; but in 1833 the act was repealed. In 1831, also, it was found advisable to adopt a different method of getting at the stock in Vermont banks held by tax-payers.¹ By this method the cashiers of banks transmitted annually in April to the clerks of towns in which stockholders resided a statement of the amount of stock held by residents of those towns on April 1st, with the names of the holders. If a cashier neglected to do this for over thirty days after May 1st, he was liable to a penalty of \$10, and for every additional thirty days he was liable to the same amount. In 1833 a general exemption of lands and buildings used for educational purposes was made.² An important act of 1834 taxed bank stock owned by non-residents³ to the corporations in the towns in which the latter were located.⁴ Cashiers were obliged to return statements to the listers, and the penalty for neglect was placed at not less than \$100 nor more than \$500. The banks were given a lien on the shares taxed, and a provision was added that shares were not to be transferable until all taxes had been paid. The amount at which bank and insurance stock was to be listed was increased in the same year (1834) from \$3 to \$6 per \$100.⁵ A change in the form of the tax-payers' oath is significant.⁶ The oath was now formulated so as to include the clause "whether such debts or obligations are secured by mortgages or not." The implication is that it has been the custom not to include in the list debts secured by mortgages.

The legislature of 1836 assumed the bicameral form, an amendment to the constitution to that effect having been adopted; and in the following year a committee of one senator from each county was appointed to join the house

¹ *Laws*, 1831, chap. xxii, p. 23.

² The term "non-residents" refers to non-residents of the commonwealth.

³ *Laws*, 1833, chap. xxv, p. 24.

⁴ *Ibid.*, 1834, chap. xiii, p. 9.

⁵ *Ibid.*, xv, p. 13.

⁶ *Ibid.*, xxi, p. 17.

equalizing committee.¹ An act of 1840 required stock owned in any steamboat company chartered by the legislature, whether the owners lived within or without the commonwealth, to be listed at the rate of \$6 for every \$100.² The stock of non-residents was placed in the list of the town in which the company held its annual meeting, and in other respects such stock was treated in the same manner as bank stock. This act made an important modification in the provision for appeals from assessments for money on hand, debts due, and bank and other stock, by which persons regarding themselves as over-assessed were allowed to make written application to the listers for a reduction, after which the listers examined the persons on oath and heard other testimony in point. The investigation over, the listers could place the assessment at "such sum as, from the evidence, they shall deem just." This was a radical departure from the former practice, in that the services of the selectmen were now dispensed with, and declarations were abandoned as conclusive evidence. It was felt to be necessary to go behind the returns. The act in question made provision for listing sloops and other vessels owned in the commonwealth (except those owned by incorporated companies) at four per cent. of their valuation. If such vessels were held by persons out of the commonwealth in trust for persons in it, they were listed to the persons for whom they were held.

§ 4. *The Act of 1841.* The injustice of listing large masses of personal property at fixed rates forced itself at length upon the attention of the people, and led to another revision of the law in 1841.³ The act of that year has been the nucleus of all succeeding legislation. The main characteristic was the appraisal of all property, both real and personal (with certain exceptions), which was listed at one per cent.

¹ *Laws*, 1837, chap. xxxii, p. 24.

² *Ibid.*, 1840, chap. ix, p. 15.

³ *Ibid.*, 1841, chap. xvi, p. 10.

of its valuation.¹ The plan of taking one per cent. of the appraised value still obtains. The polls of males between the ages of twenty-one and sixty years were listed at \$1 each.

A number of exceptions were made to the fiction that movables follow the owner. Thus, goods and general merchandise were listed in the town in which they were located, in case the owner lived in another town. The same rule held for machinery, and in case the latter was owned by a corporation, its value and that of the real estate were deducted from the value of the stock before the stock was listed. Horses, cattle, etc., were listed to the owner in the town in which they were kept on April 1st. Personal estate belonging to persons under guardianship was set to the guardian in the town in which the person lived, if he lived in Vermont; if he did not live in Vermont, the estate was listed to the guardian in the town in which the latter lived. There was a similar provision for property in the hands of an executor, administrator or trustee.²

The listers, immediately after April 1st, each year, took a list of all the polls and the personal property possessed by residents, and on their demand all persons were to exhibit, within ten days, a statement of the true amount of their personal property liable to taxation, and so much of the debts due from them as they chose to disclose. The law now, it will be seen, called for statements from the tax-payers only

¹ Unimproved lands were no longer exempted from listing and taxation, and the Council of Censors at this time seems to have regarded the change as imposing "an unequal and unjust burden on the owners, particularly non-residents." See *Journal of the Council of Censors*, 1848-9, p. 82. The practical objection was to the high appraisals frequently made for such lands.

² In 1844 it was made the duty of the listers, on being convinced that such personal estate was assessed in another commonwealth, not to list it, and the act was made to apply to "agents," as well as executors, administrators and trustees. In the case of *Catlin vs. Hull*, 29 Vt., 152, the situs of such property was discussed, and declared to be in Vermont.

at the demand of the listers. In case of neglect to return these statements, or in case the listers were not satisfied with them, the listers assessed such persons "in such sum as they shall think just and reasonable." There were quinquennial appraisals of all real estate, to be made by June 10th of the year for appraisals. The real estate was set at its "fair cash value." The listers deposited their lists for the towns in the town clerk's office, by July 1st, each year. Persons regarding themselves as "aggrieved" by the assessment could, within thirty days after that date, apply to the listers for relief. The listers could examine such persons on oath and hear other testimony, and their decision after the examination was the legal appraisal. In this examination persons were not compelled to disclose the names of persons who were indebted to them. The lists were revised in September and a copy sent to the clerk of the house of representatives by the second Tuesday of October. County and commonwealth equalization of real estate was effected in the same manner as under the law of 1825, and the list as certified by the equalizing committee of the legislature was thenceforth used for commonwealth taxes for the succeeding five years.¹

Cashiers of banks and clerks of corporations were obliged to transmit to the clerks of the towns in which the stockholders lived, the names of those living in each town and the amount of stock held by them on April 1st, together with the actual amount paid on each share.

The act of 1841, thus, was more than ever a general property tax, combined with the poll tax. The income tax idea had been totally eliminated for the time being; but its end was not yet. In several respects the act seems to be regarded as defective, and the legislature of 1842 passed an

¹ Before this the list revised by the legislative committee was the legal list for all taxes.

amendatory act embodying various important changes,¹ one of which was a revival of the income tax. Attorneys, physicians and surgeons were, after that year, listed at not less than \$1 nor more than \$30, at the discretion of the listers. Polls were listed at \$2 instead of \$1. Buildings of all kinds, having not more than ten acres of land attached, and mines and quarries, were now placed in a column of the list separate from other real estate, and the county equalizing conventions were compelled to equalize separately the valuations in the two columns.² There seems to have been a disposition for the listers not to include certain articles in the list of personal property, for the following are particularly mentioned in this act as listable: Swine that had been wintered one winter, hives and swarms of bees, pleasure wagons, carriages and sleighs, gold and silver watches, and all kinds of chattels and merchandise, whether within or without the commonwealth, unless taxed in another commonwealth. Deductions for debt were hedged about by a strict provision, requiring persons asking deductions to make oath that the debts were *bonâ fide*. The act gave the selectmen authority to revise the ratings of the listers as to money on hand, stock, income, etc., thus reviving the practice previous to 1841.

In this form the grand list retained a degree of permanency for many years. Changes of significance, however, were made from time to time. One of these was that authorized by an act of 1845,³ which directed that all shares in

¹ *Laws*, 1842, chap. i, p. 5.

² The provision was designed to relieve the buildings of farmers from high taxation. Section 3 of the act says: "This section shall not be so construed as to require the listers to appraise the buildings on any farm of more than ten acres, occupied for the use of said farm, separate from the farm on which they stand, but the same shall be appraised with and as part of said farm."

³ *Laws*, 1845, chap. xvii, p. 11.

railroad companies be placed in the lists of the towns in which they were owned, in the same manner as that by which bank and other stock was listed; but the act did not affect particular companies until some portion of their roads had been completed and put to use. An act of 1849 revived the practice of listing shares of bank stock owned by non-residents in the towns in which the banks were located.¹ In case the residence of the owner of stock was unknown or was in an unorganized town or gore, such stock, by an act of 1852, was also set in the list of the town in which the bank was located.² The act in regard to the taxation of non-resident stockholders was repealed in 1854, when a new act was passed, requiring the banks to pay to the commonwealth treasurer one per cent. of the value of the shares owned by non-residents, and the amount received was divided among the counties.³ In 1853 railroad stock owned outside the commonwealth was taxed directly by the latter at the rate of one per cent., if it yielded six per cent. interest.⁴ This system of taxing the stock of non-residents continued until it was declared unconstitutional by the United States supreme court on the ground of discrimination, after which such stock was again listed at the home of the principal office of the corporation, in the same manner as was other stock.⁵

An act of 1850⁶ repealed the "faculty tax" on physicians and attorneys, and since that year this peculiar tax has not held a place in the revenue laws of Vermont. It has always been obnoxious to the professional class, and the revenue derived from it showed a tendency to constantly dimin-

¹ *Laws*, 1849, chap. xviii, p. 13.

² *Ibid.*, 1852, chap. xliii, p. 41.

³ *Ibid.*, 1854, chap. xxiv, p. 26. In 1864 the rate was made two per cent.

⁴ *Ibid.*, 1853, chap. lxiv, p. 56.

⁵ The legality of the last-mentioned method was upheld in the cases of the Town and Village of St. Albans *vs.* the National Car Company, 77 Vt., 68.

⁶ *Laws*, 1850, chap. xxxix, p. 28.

ish. The opinion of John Stuart Mill¹ that an income tax, although eminently fair in principle, cannot be applied with equality in practice, except in emergencies, has confirmation in the experience of Vermont. The "faculty tax" was either a tax on the "most conscientious" or it was more or less a dead letter.

Almost every year at this time saw some change in the listing laws. An act of 1852 allowed the listers to omit from the list of polls the names of very poor persons, and those of persons likely to leave town before the tax could be collected.² In 1853, a committee of the House of Representatives was made the commonwealth averaging board, the Senate thus being ignored in equalization. In the same year stock of steamboat and all other transportation companies was put in the same category with stock in railroad companies and banks.³ Another act of this year has a certain interest on account of the light it sheds upon the practical aspects of listing. It provided that removals from one town to another on or before April 1st should not exempt persons from listing and taxation in the towns in which they had been residing. In such cases the listers acted in a judicial capacity.⁴

In 1855 occurred another revision of the grand list laws,⁵ but there was no deviation as to principles from the act of 1841. The revision was really a systemization of the act of 1841 and the amendments made to it in the intervening period. Section 46 of this act (that of 1855) was specific in reference to deductions from personal property for debts, the condition of deduction being that each person "shall answer all such interrogatories in regard to debts due or owing from him as shall be propounded to him by the listers." In 1856 an act

¹ *Principles of Political Economy*, Laughlin's edition, p. 556.

² *Laws*, 1852, chap. xlv, p. 41.

³ *Ibid.*, 1853, chap. xxxvii, p. 34.

⁴ *Davis vs. Strong, et al.*, 31 Vt., 332.

⁵ *Laws*, 1855, chap. xliii, p. 44.

was passed declaring that the alterations in the valuations made by the county conventions and the commonwealth equalizing committee were not to apply to any taxes but county, commonwealth and commonwealth school taxes.¹ The act of 1855 was construed in 1856 to mean that stock in corporations located outside the commonwealth should be listed, even if such corporations were taxed where they were located,² but in 1857 it was enacted that such stock should not be listed if the corporations paid *full* taxes in the commonwealths in which they were located.³ In 1862 dogs were set in the list at \$1 each, and persons owning dogs were not allowed to deduct this amount on account of any debts owed.⁴ An act of the same year⁵ authorized the governor to appoint a commissioner for every county in which there were unorganized towns or gores, who were to perform the duties of listers for such towns and gores. The appraisals of real estate by these commissioners were not revised by the county averaging conventions or the legislative committee. In 1864 the provision of the listing law regarding the stock of banks was extended to the national banks,⁶ but in the following year it was enacted that such stock owned by non-residents should be listed in the town in which the bank was located, and that the cashier should pay the taxes assessed. It was not until 1878 that the same rule was adopted for taxing the stock of non-residents in commonwealth banks, despite the unconstitutionality of taxing it in a special manner.

¹ *Laws*, 1856, chap. xlvii, p. 52. "Commonwealth school taxes" were those levied by the towns under an act of the General Assembly. The act of 1856 was repealed in 1860.

² *Laws*, 1856, chap. xlviii, p. 52.

³ *Ibid.*, 1857, chap. xxxi, p. 43.

⁴ *Laws*, 1862, chap. x, p. 29. The act continued until 1876, when dogs were dropped from the list, and a special license fee for local revenue was established. *Laws*, 1876, chap. xvi, p. 78.

⁵ *Laws*, 1862, chap. xviii, p. 40.

⁶ *Ibid.*, 1864, chap. xx, p. 40.

An act of 1864¹ facilitated the work of listers by compelling tax-payers to hand in lists of their real and personal property by April 10th each year, and to give notice of all transfers of real estate made during the preceding year; and in the case of mortgages the mortgagors were to notify the listers when the mortgagees took possession. Here was a revival of the listing system, pure and simple. From 1841 up to this time lists had been given to the listers only on demand from the latter. The act took particular notice of deductions from personal property on account of debts, and it was made the duty of the listers to require in each case a statement, under oath, of the amount of United States stock, bonds or other securities; and only the excess of debts over the amount of such securities, which were exempt by the national law from taxation, was deducted from the list. Persons or corporations neglecting or refusing to disclose the amount of such securities were not allowed to make any deductions for debts owed. The court decision denying the right of commonwealths to tax United States securities led, in 1865, to an act by which the income, and not the securities themselves, was listed.

Persons dissatisfied with the appraisal of their real estate were in this year (1865) allowed an opportunity to appeal to the judges of the county courts, whose decision was final, but did not apply to the list as made up for county and commonwealth taxes.² In 1867 the maximum age at which polls were to be listed was made seventy, instead of sixty, years.³ In 1869 the stock of trust companies and "other moneyed corporations" was listed in the same manner as national bank stock; that is, stock owned within the commonwealth was listed in the towns in which it was owned, while that

¹ *Laws*, 1864, chap. lxiv., p. 72.

² *Ibid.*, 1865, chap. xxiii, p. 35.

³ *Laws*, 1867, chap. xlii, p. 53.

owned outside the commonwealth was listed in the town in which the office of the company was located.¹ In the same year manufacturing establishments having a capital of at least \$1,000 were exempted from taxation for the first five years, but the listers were ordered to set the appraisal of the exempted property in the list, noting the exemption and the date at which it began.

Quinquennial appraisals of real estate were abandoned in 1872 and quadrennial appraisals substituted.² The first appraisal under the new plan occurred in 1874. The act by which this change was made contained several other provisions of importance. Appeals from the appraisals of real estate by the listers to the board of civil authority, instead of the county court judges, were authorized, and the decision of this board was final. A new method of equalizing the lists of the counties, also, was adopted, each county convention electing one of its members as a member of a commonwealth board, which met in August. The secretary of state was an *ex officio* member and presided. The appraisal of real estate, as made up by this board, was that on which commonwealth taxes were levied for the succeeding four years.

The first attempt to tax the real estate of railroads was made in 1874, when an act was passed giving the listers in each town authority to list the real estate owned or occupied by railroad companies within their respective towns exactly the same as other real estate, and real estate was defined to include the road-bed, tracks, and all lands used for railroad purposes.³ No road-bed could be valued at over \$2,000 per mile of the main line. The real estate of railroads, however, was exempted from taxation for ten years from the time at

¹ *Laws*, 1869, chap. xxv, p. 29.

² *Ibid.*, 1872, chap. xv, p. 41.

³ *Ibid.*, 1874, chap. iv, p. 19.

which regular trains began to run.¹ The act contained a weakness which revealed itself in the next quadrennial appraisal. In instances in which the road-bed was valued at the maximum of \$2,000 per mile, and the total valuation of the towns was increased by the county or commonwealth equalizing boards, the final valuation was placed at a higher figure than \$2,000—a result at variance with the purpose of the law. To remedy this defect, an act was passed in 1878 by which the appraisals of railroad real estate and other real estate were made separately, as were the equalizations of the county boards.² In the equalization of the appraisals of the road-bed, the limit of \$2,000 could not be passed.

From the close of the war up to 1880, there was a growing discontent with the property appraisals. The equalizing boards were not equal to the herculean task of wringing full valuations of real estate from the listers. The efforts of the county boards had, in some instances, ended in dead-locks and other complications, which it was necessary to refer for settlement to the house delegations of the respective counties in the legislature.³ Each town was actively interested in keeping its list as low as possible; for the lower it was, the less were its commonwealth and county taxes. Listers are men, and, with local sentiment strongly demanding a low valuation, it was but natural that, despite oaths to list at the "true value in money," each should find it the part of wisdom to keep the list of his own town down as far as the county board would allow. Still, although placed at a valuation always below the true value, and sometimes as low as one-third of it, real estate was generally equalized with something like rough justice. Personalty, however, steadily dropped in valuation, notwithstanding the fact, apparent to

¹ In 1876 the limit was reduced to eight years. *Laws*, 1876, chap. xvii, p. 84.

² *Laws*, 1878, chap. cii, p. 94. See also an act on the subject on page 95.

³ *Ibid.*, 1870, chaps. ccxciii-iv-v-vi, pp. 573-6.

all, that the amount owned in the commonwealth was increasing.¹ In 1866, the valuation of personalty was placed at \$21,435,281 in the list; in 1870, at \$21,555,428; in 1874, at \$19,330,432; in 1878, at \$16,845,123; and in 1880, at \$15,037,262. The fact was that not only was personalty listed for less than its true value, but the tax-payers were concealing, to a marked degree, their property of this kind, for the purpose of avoiding taxation. Deductions for debts owed were one of the most common means of evasion. The actual status of taxation during the fifteen years from the close of the war until 1880, was well described by Hon. Jonathan Ross, the present chief justice of the commonwealth, in a report to the Council of Censors as chairman of the committee on taxes and expenditures, in 1869. He said:

In different parts of the state the same class of property is assessed at different valuations, and rarely, if ever, at its true value in money, as required to be assessed by the statute. Real estate is assessed usually at from one-half to two-thirds of its true value in money, unless it happens to consist of wild lands owned by non-residents, which are frequently assessed for more than they will bring in market.

¹ Governor Stewart, in his message to the legislature in 1870, said: "Our system for the assessment of taxes is defective. The amount of personal estate which escapes taxation is enormous. Valuations are unequal, and the burdens of taxation bear unequally upon our citizens. Real estate cannot escape, but personal property, through the much-abused privilege of offset for debts, and the various shifts of evasion and concealment too commonly practiced, is largely omitted from our annual lists." Governor Fairbanks, in 1876, referred at length to what he termed "the work of demoralization." He said: "Without doubt there is too much foundation for these complaints, though the class first mentioned could have no existence in fact, if listers would faithfully observe the law, and appraise all property at its just value in money. It is notorious that they do not regard the law in this respect, but appraise property at from one-third to two-thirds its just value in money, often vying with each other to place and keep the property in their locality in the list as far below its value as possible. I am informed that conscientious listers often refuse to sign and make oath to the list, from a knowledge of their failure to comply with the law."

Personal property is usually assessed at nearer its value in money, but rarely above two-thirds that value, unless it consists of stocks returned to the town clerk [owned by non-residents], which are generally assessed at their full par value. * * * Public opinion seems to be morally depraved in regard to this matter. It is hardly considered a stain upon one's character to make any statements, however false, in regard to the amount of his property. * * * While the personal property is assessed at from half to two-thirds its true value in money, the deductions for debts are for the full amount, and sometimes double the amount; in fact, it is believed that fictitious debts are frequently contracted for the express purpose of obtaining these deductions.¹

Although the defects of the listing laws referred to grew more apparent in succeeding years, it was not until 1880 that attention was sufficiently fixed on the subject to secure a change of policy on the part of the legislature. In that year was enacted a law which was intended to result in larger returns for both real and personal property, and it may be said with truth that it has been in a measure successful. In 1882, the law was carefully elaborated, and as it then left the hands of the legislators it now remains on the statute-book, with immaterial amendments.

§ 5. *The Grand List at Present.* The act of 1880² did not purport to be a complete remodeling of the listing laws. It was based on the act of 1841, which had been revised in 1855. Its title was expressive—"An Act to Equalize Taxation." In accordance with its provisions, all taxable property was set in the list at one per cent. of its estimated value in money on April 1st. Blank inventories were furnished the towns and cities by the secretary of state. These inventories were very specific. The amount of United States stock, bonds, and other exempted securities was to be stated. A

¹ *Journal of the Council of Censors*, 1869, pp. 34-6.

² *Laws*, 1880, chap. lxxviii, p. 76.

statement in detail of debts actually due from the tax-payer on April 1st, to the amount of the deduction claimed, was to be included, and no deduction could be made for debts owed unless the statement contained the name and place of residence of each person to whom the tax-payer was indebted, and the amount owed to each. Nor could any deduction be claimed on the ground of being an endorser or surety, and deductions on account of joint indebtedness could be only to the amount which the tax-payer would be obliged to pay if all the persons jointly bound were to pay equal parts of the debt. The amount of United States securities was deducted from debts owed. An oath to the correctness of the inventory was required; this was the characteristic feature of the law. It called upon each tax-payer to swear or affirm that he had set down only such debts as he was unconditionally bound to pay, and that he had conveyed no property nor created any debt for the purpose of evading the law. The oath or affirmation was to be signed.

On April 1st the listers began to collect the inventories, examine the visible property and appraise it at "its true value in money." If a person omitted to make and deliver to the listers his inventory, or to swear to it, or if the listers had reason to believe the inventory not to be a full and correct statement, they obtained the amount of taxable property in the best way they could, appraised it and doubled the amount; and one per cent. of the amount obtained stood as the list.¹ No relief could be granted by the selectmen in appeals in such cases. A person wilfully swearing falsely as to his inventory was regarded as guilty of perjury. The listers were required to take the usual oath, and those violating it also were declared guilty of perjury. If a lister accepted an

¹ This method of appraisal was held to be constitutional in the case of *Bartlett vs. Wilson and Tr.*, 59 Vt., 23.

inventory not properly made out and sworn to, or neglected or refused to set in the list each item of an inventory, he forfeited \$200 for each instance, and any tax-payer could bring suit against him in the name of the town. The lists, in alphabetical order, were lodged in the town clerk's office by April 25th for inspection. The commissioners in the gores were charged with the same duties as those of the listers.

The appraisal of the road-bed of railroads was at this session of the legislature put into the hands of a commonwealth commission of three members, appointed by the governor.¹ This commission was directed to certify to the listers of the towns through which railroads passed the average value per mile of the road-bed, and the listers were obliged to accept this valuation. The other real estate of railroads was listed by the listers as before. This solution of the appraisal of railroad real estate was only temporary, however, for in 1882 a comprehensive system of corporation taxation was adopted, and previous legislation was abandoned. Industries and quarries having over \$1000 invested were in this year (1880) exempted from taxation for five years, and the towns were permitted to extend the exemption to ten years. But such property was appraised and listed.² By another act the towns were allowed to drop the polls of the militia from the list if they chose.

The act of 1882,³ "revising, consolidating and amending the laws relating to the grand list," contains all that the act of 1880 did, and much more. The provision for information by means of inventories is exhaustive. It is hardly conceivable how more particulars could be included, or how greater precautions could be taken to avoid uncertainty or evasion.

¹ *Laws*, 1880, chap. lxxx, p. 81.

² *Ibid.*, cxxviii, p. 117. In 1884 the limit of exemption was fixed at five years, and the towns could decide by vote on the exact period within the limit.

³ *Ibid.*, 1882, chap. ii, p. 11.

A few of the items of the inventory will illustrate its thoroughness. Item no. 3 asks how many horses, mules, asses, oxen, cows, other neat stock, sheep and swine, over four months old, were owned on the first day of April. No. 4 asks the number of swarms of bees and the number of watches, pianos and organs. No. 9 is supposed to sound the depths of each tax-payer's knowledge as to his money on hand, debts due, mortgages, etc., held. No. 16 is: "What amount of debts were you owing on the first day of April, 189-, for which exemption from taxation should be made? State the name and residence of creditor." The inquiries regarding stock and bonds are exceedingly minute.

The oath prescribed for the tax-payer is the same as that of 1880. The listers are given full opportunity, also, to "make such personal examination of the property which they are required to appraise as will enable them to appraise it at its true value in money." The deductions from personal estate allowed are the excess of debts owed over the amount of United States bonds and other stock and bonds exempt by law, and the amount of deposits in savings banks, savings institutions and trust companies, but no debt is taken into consideration in making the deduction unless the name and residence of the person owed is stated in the inventory. On this point the law is the same as it was in 1880. If the deduction claimed is greater than the amount of personalty owned by the tax-payer in the town of his residence, he is permitted to have this excess apportioned among the other towns in which he is taxable for personalty, and the part apportioned to each town is deducted from his personalty there taxable. The real estate is listed at the valuation fixed by the quadrennial appraisal, unless there has been an increase in the value after that time, due to new buildings or extensive repairs, or a decrease, due to fire, flood, or other accident. In these cases

the valuation is either increased or decreased. One per cent. of the appraised value of the real and personal property is taken as the basis of the list, the amount of the polls being added.

In cases in which a person or corporation wilfully neglects to make out and return an inventory in the proper manner, the provision is as in 1880: the listers are authorized to ascertain the amount in the best way they can and double it before taking the one per cent. A refinement of the law of 1880 in this particular enjoins the listers, if they regard the sum obtained by doubling as less than the true amount, to "further assess such person or corporation for a sum which will, in their judgment, make up such amount." If no property can be found, the listers are permitted to assess the person or corporation at what they believe is the value of the property possessed. The listers are directed to hear persons dissatisfied with their appraisal or any other act; but the lists of persons arbitrarily assessed for wilfully ignoring the inventories cannot be reduced below the amount reached by doubling the appraisal. Persons dissatisfied with the decision of the listers may, within twenty-four hours, appeal to the board of civil authority for a final hearing. The completed list is deposited in the town clerk's office, with an oath appended to the effect that it has been made up in accordance with the law, to the best of the listers' information and belief. The listers are directed, as soon as they have collected the inventories, to ascertain from them the amounts due to and owing from tax-payers, and to notify the listers in the towns in which the persons who owe the debts, or to whom the latter are due, reside. Abstracts of the lists are sent to the secretary of state by July 1, and the secretary prepares the list of the commonwealth by October 1.¹ Personal estate is distinctly stated in

¹ *Laws*, 1886, chap. xi, p. 8.

the act of 1882 to include choses in action. One of the most important changes in practice was the abandonment, in this year, of the equalizing system. This was effected by a provision in the corporation tax law.¹

A separate act² of 1882 makes the deposits in savings banks in excess of \$1,500 listable as other personal property is. As a penalty for not entering in his inventory the amount of the excess over \$1,500, the tax-payer is made liable to forfeit the excess to the town in which he resides. Deposits in trust or in the name of another person, for the purpose of avoiding the law, are subject to the same forfeiture. The treasurers of savings banks, saving institutions and trust companies are required to make annual returns to the listers of the towns in which depositors having an excess over \$1,500 reside. Treasurers failing to comply with the law are liable to a fine of \$5,000. The opportunities for evading taxes on these deposits are thus made as few as possible.

The changes in the law since 1882 have been unimportant. In 1886 to the list of exemptions was added one watch not exceeding \$20 in value.³ In 1892 lands previously unoccupied and neglected, but thereafter occupied and improved, and the buildings on them, were exempted from taxation for five years, if the towns in which they are situated so vote, but the appraised value of the lands must be listed, with the exemptions noted.⁴ This measure, called "An Act to Encourage the Improvement of Unoccupied Lands," is a part of the effort which is made to repeople the abandoned farms of the commonwealth—an effort which is being crowned with fair success. Another act of 1892 exempts from poll taxes veterans of the civil war, having no taxable property, if re-

¹ *Laws*, 1882, chap. i, p. 3.

² *Ibid.*, iii, p. 20.

³ *Ibid.*, 1886, chap. iv, p. 5.

⁴ *Ibid.*, 1892, chap. x, p. 18.

quests to that effect are made.¹ The names are set in the list, with the words "soldier exempt" opposite.

The law of to-day is substantially that of 1880 and 1882, and the latter are parts of the law of 1841, revised and consolidated in 1855. In its present form the grand list includes the polls of males, between twenty-one and seventy years, each at \$2; and aside from that feature it is a general property tax. Real estate is listed in two classes, viz.: that which includes not more than ten acres of land and that which has more than ten acres. Personal property, with very few exceptions, is listed, and to get as much as possible on the list inventories of a very "inquisitorial" character are sent to every tax-payer, and must be returned, accompanied by a signed oath. Deductions from personalty are allowed for debts owed, but every precaution is taken to frustrate deductions for fictitious debts. False swearing is denominated perjury. The exemptions allowed include the following: 1. Polls of veterans not having taxable estate and of those physically infirm; also, the polls of militiamen and firemen, if the towns so vote. The extremely poor and those likely to leave town before the tax could be collected are not included in the list. 2. Deposits in saving banks to the amount of \$1,500. 3. The property of manufacturing companies having over \$1,000 invested, for a period not exceeding five years, if the towns so vote. 4. Land and buildings owned and occupied as a home, which previously had been unoccupied and neglected for two years or more, for five years, if the towns so vote. 5. Real estate owned by the commonwealth or the United States. 6. Real and personal estate used for public, pious and charitable purposes. 7. The real estate and trust funds of cemeteries. 8. The household furniture of every person, not exceeding \$500 in value; wearing apparel; private and professional libraries; farm-

¹ *Laws*, 1892, chap. xi, p. 18.

ers' and mechanics' tools necessary to carry on their occupations; provisions necessary for the consumption of a family for a year; sheep, cattle and horses not four months old; fowls to the value of \$20. 10. Lands leased by the towns for educational purposes, and lands owned or leased by colleges, academies or "other public schools," together with the boarding houses of normal schools. 11. Lands leased for the support of religion. 12. Real estate used by Grand Army posts for post purposes.¹ Persons wilfully refusing to return proper inventories are subject to double doomsday, and have no redress. One per cent. of the total valuation of the real and personal property listed is added to the total for polls, and this total forms the grand list. Such, in brief, is the listing system in 1894.

I have said that the departure of 1880 has, in a measure, attained the purpose. A comparison will make this clear. The total of personal property in the list of 1880—made up just before the new law went into effect—was \$15,037,262, which was seventeen per cent. of the aggregate valuation of realty and personalty. In 1882 the total of personalty was \$46,218,508, which was thirty per cent. of the aggregate. In 1892, personalty was \$48,878,272, or thirty-one per cent. of the aggregate. Property is at present appraised at about two-thirds of its actual value, which is certainly as high as can reasonably be expected, in the light of experience. The law may be said to have had the desired effect thus far; but, like all other general property laws, it is perhaps to lose its efficacy in time. It is much easier to put a large amount of personalty into a list in a certain year, through stringent and "inquisitorial" rules, than it is to keep it there permanently.

¹ Nearly all these exemptions are mentioned in the listing laws and are exemptions from listing as well as taxation.

CHAPTER V. COMMONWEALTH REVENUE.

§ 1. *Early Sources.* At the time when the formal separation from New York was being accomplished, affairs in Vermont were in a state of decided confusion. In the summer of 1777, occurred the British advance from Canada under Burgoyne. The excitement in New York and Vermont was intense. At this critical time two measures, in addition to provision taxes (which will be referred to later), were adopted as means to secure a revenue. Ordinary taxes were out of the question just then. One of these measures was a loan office, authorized by the Council of Safety, which had been appointed as a temporary directorate by the convention of July 2nd-8th, which adopted the constitution. Ira Allen was selected as the trustee, and by August 18th, an office had been opened at Bennington. An appeal to the public was made through the *Connecticut Courant* for loans in sums of £10 or more, payable in one or more years, with interest at six per cent. It does not appear that any considerable sum was advanced, although the office was continued after the state government went into operation.¹ The project had little fiscal importance.

¹ In an address to the people of the state in July, 1779, Allen, who had been elected state treasurer, referred to these loans, but threw no light on the amount received. He said: "The Circumstances of this State, in some Respects, is different from any other State on the Continent:—it is not in Debt—I have as much Money in my Office as is due from the State except what I have taken in upon Loan, to balance which I have in my Office about as much Money in Continental Loan Office Notes, so that, on a Balance, the State is little or none in Debt, excepting what may be supposed to be this State's Proportion of the Continental Debt."

A more successful method of raising funds was devised by Allen at a meeting of the Council of Safety in August (1777). It was the confiscation of the estates of Tories. In his determination to have a regiment of troops, instead of a smaller number, equipped, he promised, while a discussion of the subject was going on, to devise a plan by sunrise of the following day. When the Council met the next morning, he reported in favor of seizing the property of Tories, and turning the proceeds into the treasury of the Council. The idea was adopted, and it was claimed by Allen that this was the first instance in the colonies of the confiscation of Tory estates.¹ The practice thus begun by the Council of Safety was continued by the state government, and was vigorously pushed, notwithstanding a remonstrance of Congress in 1780, at the instigation of New York, which lost no opportunity to oppose the acts of Vermont. It is certain that a ruthless hand was laid on loyal subjects. Up to 1780 their estates were the chief source of revenue.²

Another fruitful means of supplying the treasury during the latter part of the war and in the following years was the grants of land which had previously been unsettled. These grants began on a large scale in October of 1780, and, curiously enough, the first township granted then was Montpelier, which afterward (in 1808) became the capital of the commonwealth. The fees for this township were £480 in hard money, or an equivalent in Continental money. At

¹ Ira Allen's *History of Vermont*, p. 385 of Vermont Historical Society's Collection, vol. i.

² For a commission for confiscation see Slade's *State Papers*, p. 560. Ira Allen, in his *History of Vermont*, speaks of the confiscations: "In consequence of internal divisions, and to make government popular, it was thought good policy not to lay any taxes on the people, but to raise a sufficient revenue out of the property confiscated and the ungranted lands. Hence it was found that those who joined the British were benefactors of the state, as they left their property to support a government they were striving to destroy."

the same session the General Assembly granted some fifty more such townships, on about the same terms, the exact amount varying according to the size of the township and the quality of the land. Blank petitions for grants had been printed and scattered through New England and further south, and even in the army camps, for the purpose of calling attention to the subject. At close of the war there was a genuine boom in Vermont lands, and land companies were formed in New Hampshire, Massachusetts, Rhode Island and Connecticut. The freedom of the young state from embarrassing war debts, as well as the fertility of the land, operated to draw in immigrants and attract speculators.

The confiscated Tory estates and the land grants seemed, in the words of the Council of Censors, "to have been a boon conferred by providence for the support of our republic in its infancy, while its subjects were unable to pay taxes." The receipts were considerable. In 1787, when the treasury accounts were audited for the period from March of 1777 to October of 1786, it was reported that the total amount in Continental money (much depreciated, of course) received in that period from the confiscated estates was £190,433 6s. 4d.; from the land grants, £66,815 13s. 8d. While the receipts from the latter would undoubtedly have been much larger under a more prudent policy of disposing of the land than was followed, the fact remains that the grants tided the state over a very trying time.¹

§ 2. *Provision Taxes.* Notwithstanding the large revenue obtained from the first through the confiscation of the estates of Tories, direct taxes for the support of the army soon became unavoidable. The first of these was one payable in

¹ Ira Allen in 1786 commented thus upon one effect of the grants: "This mode of procuring money made the state many firm and interested friends abroad, amongst which were some of the first characters in the United States."

kind, and was levied by the General Assembly in October of 1780. The act¹ provided that

there be seventy-two thousand seven hundred and eighty-one pounds of good beef; thirty-six thousand three hundred and eighty-nine pounds of good salted pork, without bone, except back-bone and ribs; two hundred and eighteen thousand three hundred and nine pounds of good merchantable wheat flour; three thousand and sixty-eight bushels of rye; six thousand one hundred and twenty-five bushels of indian corn, collected at the cost and charge of the respective towns in this state, and at the rates or quotas hereafter affixed to such towns.

The selectmen levied the tax, which could be paid in silver or paper money, if any tax-payer preferred. If a town refused to pay, the commissary-general had authority to summarily seize the quota from the persons opposing the execution of the law. No basis on which the apportionment was made is indicated, save through the very vague and ethical expression, "of right ought to be." It was probably the polls and the general property of the towns, roughly estimated.

This tax was succeeded in October of the following year (1781) by another of much the same character.² This time, however, there was no apportionment of quotas to the towns, but a definite rate of "twenty ounces of wheat flour, six ounces of rye flour, ten ounces of beef, and six ounces of pork, without bone, except rib and back-bone," on the pound, was levied on the list of "polls and rateable estates." The other requirements of the act were substantially the same as those of the act of 1780, except that as a precaution against having provision of poor quality unloaded on the army, it was enacted that the casks be branded so as to designate the town from which they came.

¹ *Laws*, 1780, p. 407 of Slade's *State Papers*.

² *Ibid.*, 1781, p. 440 of Slade's *State Papers*.

The two provision taxes were not paid with the greatest alacrity, but the same can be said of all the taxes of the period. It was a time of too great poverty and disorder for prompt and cheerful responses to tax levies.

§3. *Land Taxes.* In the thirty-five years following the separation a number of special taxes were levied upon land, in proportion to the quantity. The first of this nature was that authorized by the act providing for bills of credit, passed in April, 1781.¹ Part of the amount issued was paid for by a land tax, and part by a tax on the grand list. This land tax was levied to reach the owners of land in large tracts, "a very large part of which has hitherto paid no part of the great cost arisen in defending it." The rate was ten shillings on each hundred acres that could then be settled, through the cessation of hostilities, public rights and college lands excepted; and the tax could be paid in silver, gold or the bills of credit. At least one other land tax was levied in this decade, under an act of 1783. But land taxes were a subordinate means of revenue, and the only one of importance for several years was that of 1791,² the object of which was to raise the \$30,000 due New York in extinguishment of the claims of grantees of land from the government of that commonwealth when it was a royal province. The tax was at the rate of a half penny on each acre, "except lands sequestered for public, pious and charitable uses, and still remaining to such uses," and was to be paid by January 1st, 1794. A land tax of one cent on each acre also was levied in 1796, but the difficulty in collecting it and the tax of 1791 may have been the reason why in the next ten years no taxes of this sort were voted. In 1807, however, another levy of one cent on the acre was made, the purpose being to meet the expense of

¹ *Laws*, 1781, p. 424 of Slade's *State Papers*.

² *Ibid.*, 1791, p. 295.

erecting a prison.¹ This tax was payable in hard money, orders on the treasurer issued by the supreme court, and bills of the Vermont bank.² The last land tax for commonwealth purposes was that of 1812,³ which also was at the rate of one cent on each acre, and was passed to meet the increased expense of the commonwealth on account of the war with Great Britain.

§ 4. *Taxes on the Grand List.* The first tax on the grand list was levied by the act of April, 1781, which provided for an issue of bills of credit. The tax was levied to secure the redemption of a portion of the bills, and the rate was one shilling and three pence on the pound. Silver, gold or the bills of credit were received in payment. Other taxes on the grand list followed in the period of independence, but during the first decade they were of secondary importance. Out of a total revenue of £327,947 9s. 1d. during the period from March of 1777 to October of 1786, according to the report of the treasurer in the latter year, but £45,948 6d. came from taxes.⁴ But from 1786 until 1883 (when the corporation tax law went into effect) almost the entire revenue was derived from annual taxes on the grand list.

The rate for a few years after 1787 was high, compared with that of the period following the entrance of the state into the Union. Thus, in 1787 it was six pence on the pound; in 1788, five pence; in 1789, five pence. In 1791 it fell to two and one-half pence, and, with the exception of 1796, when it was five pence, it remained at about the same figure until 1814. The grand list was expressed in dollars after 1796, and the rate in cents. In 1813 there were two taxes, each of one cent on the dollar; so that, practically,

¹ *Laws*, 1807, chap. cxxxii, p. 189.

² See Appendix I for a brief history of the bank.

³ *Laws*, 1812, chap. cxxxiv, p. 178.

⁴ *Governor and Council*, vol. ii, p. 64.

the rate of that year was two cents, instead of one cent, which had been the usual rate after the change from pence to cents. One of these taxes was for the extra expense of the militia during the war. After the war, the rate was slightly higher than before, it now being one and a quarter or one and a half cents to the dollar. In 1826 a jump was made to three cents, at which it remained until 1842, when it became ten cents. These violent changes were caused by the revisions of the listing law in 1825 and 1841, by which smaller grand lists resulted. From 1846 to 1860 the rate was from seven to twenty cents, with fourteen as the average. During the war the levies on the grand list were very heavy, that of 1864 reaching \$1.25 on the dollar. Since the close of the war the rates, on the whole, have been steadily going down, although the fact that grand list taxes in the past few years have not been levied annually has caused an apparent increase.

An important change in the principle on which grand list taxes were levied was in operation from 1882 to 1892. When a commonwealth tax was voted, the amount of the tax per capita was stated. The tax was then apportioned among the cities, towns and gores in proportion to the population according to the last United States census. The officers of the cities, towns and gores then decided upon the rate on the grand list necessary to raise the amount apportioned to them. The same method applies to county taxes. The system was a substitution for county and commonwealth equalizations, which had been given up in 1882. The decrease in commonwealth grand list taxes during the decade in which the corporation tax law has been in force brought about, in 1892, a return to the former method, minus equalization. When a tax is voted, each town, city or gore now pays the amount which the rate, applied to its grand list, produces.

Although nearly the whole revenue of the commonwealth

was formerly derived from grand list taxes, the receipts were not imposing, as the expenses have been small compared with those of most of the commonwealths. In 1793, the treasurer—Samuel Mattocks—reported that there had been received from taxes during the year from September 15th, 1792, to September 15th, 1793, £3,652 2d. The other receipts for the year were £54 17s. 9d., for interest in taxes that were overdue; £1,306 11s., for fees for land grants; and £145 1s. 6d. for fines and costs imposed by the courts. In 1815, the revenue from grand list taxes had increased to \$32,338.48, while the total receipts "extra of taxes" were \$2,647.29. In 1845, the receipts from taxes (including \$659.56 for interest on arrearage) were \$72,106.11. The other regular sources of income that year yielded about \$10,000. The grand list tax of 1860 brought in \$146,903.75; that of 1864, \$1,201,939.74; that of 1866, \$563,526.25; that of 1877, \$314,692.86; that of 1891, \$272,858.85. The difference between the receipts for 1877 and those for 1891 is due to the corporation taxes of the latter year more than to the natural decrease which would be expected in consequence of the payment of war debts.¹

§ 5. *Collection.* The system of collecting commonwealth taxes did not change in principle until 1880, but the statute books are weighted with numerous acts respecting details, especially in reference to the sale of property for non-payment. The first acts made it the duty of the treasurer of the state to issue warrants to the first constables of the towns, who, after receiving rate-bills from the selectmen, proceeded

¹ The commonwealth never had any considerable debts until the civil war began. Then debts to the amount of \$1,650,000 were contracted, but by December 1st, 1878, they had all been paid, except \$135,500, the amount of the Agricultural College fund belonging to Vermont, which is invested in commonwealth bonds. As this is not strictly a debt, the commonwealth really has been out of debt since 1878.

to make collections.¹ When the tax was not paid, the collector distrained the goods and chattels of the delinquent. If no goods or chattels could be found, the body was attached and imprisoned until the taxes and costs were paid. In case the delinquent was absent, his land was sold at auction, after notice had been published in the newspapers. The original owners were permitted to redeem their land within a year by payment of the selling price and twelve per cent. interest. Sales of land for taxes were frequent in the early days. The collectors were at first allowed one pound out of eighty collected, but in 1787 the rate of compensation was fixed at one in fifty. When the collectors neglected to collect and pay in the taxes apportioned to them, warrants were issued to the county sheriffs to collect from their property. If the collectors proved to be insolvent, the property of the selectmen or other citizens could be taken, and a tax could be assessed to reimburse the latter.

The difficulties of collection in the earlier years were great. This was particularly so with land taxes, on account of the inability of the selectmen to obtain correct statements of the ownership of lands which had been granted in townships, and were still in many cases not divided among the owners in common. The proprietors' clerks often refused to throw light upon the subject by allowing their books to be inspected, and many were the acts of the General Assembly designed to bring them to terms. Another difficulty was experienced in the failure of some of the towns to return to the treasurer the names of their first constables. An act was passed in 1787 to meet such cases.² The treasurer was instructed to publish in the newspapers

¹ The first acts are found in the *Laws* of 1779 and 1781, p. 332 and p. 425 of Slade's *State Papers*. An act of 1787 made more specific provisions. *Laws*, 1787, p. 125.

² *Laws*, 1787, p. 207.

the names of the delinquent towns, and to call upon the selectmen to make returns of the names of the derelict constables; and he was directed to issue extents for the sums due against the selectmen, if the latter neglected to respond. The Assembly was in the habit of making abatements when towns were confronted with peculiar difficulties, and occasionally a town was relieved from its entire tax. It was also frequently the custom to extend the time within which payment could be made. To relieve collectors who were responsible for taxes which could not be collected, by reason of death, removal or extreme poverty, the board of civil authority and the selectmen were permitted to abate the taxes of such persons to an amount not exceeding one-twentieth of the whole tax of the town.¹

In 1880 two methods of collecting were offered for the choice of the towns and cities. One was essentially the same as that formerly used.² Warrants were to be sent to the selectmen or the mayor, who were to give the rate-bills to the collectors, and the latter were to pay the treasurer of the commonwealth, taking from him duplicate receipts, one of which was to be sent to the auditor of accounts. Three per cent. of the amount contained in the warrants was to be credited to the collectors for collection fees and abatements.³ If a collector did not promptly pay to the treasurer the amount collected, the treasurer was empowered to issue an extent to a sheriff for collecting it out of the property of the inhabitants of the town, who could recover, in an action of assumpsit, the amount taken and twelve per cent. additional. The other method,⁴ which has been largely used, permitted the selectmen to deliver the tax-bills to the town or city treasurer, who gave public notice that taxes could be paid

¹ *Laws*, 1787, p. 151.

² *Ibid.*, 1880, chap. xci, p. 91.

³ This provision was repealed in 1892. *Laws*, 1892, chap. xiii, p. 20.

⁴ *Laws*, 1880, chap. xc, p. 89.

to him at his office within ninety days. A deduction of four per cent. was to be made for all taxes paid in that period. After the ninety days had elapsed, a warrant for the unpaid taxes was to be given to the collector, returnable in sixty days. The treasurer was allowed one-half of one per cent. on all taxes paid to him, and five cents for each name attached to the warrant issued to the collector. In 1882 he was permitted to retain one per cent. of the amount paid in,¹ and the compensation has remained at that rate.

In 1884 began the practice of holding the towns and cities directly responsible for commonwealth taxes.² In the act of that year, for raising the grand list tax, it was provided that the town or city officers could either order a tax to meet the amount due, or draw an order on the town or city treasury, or borrow the amount on the credit of the town. In 1886, this method was simplified by making it the duty of the selectmen of a town or the mayor of a city, on receiving notice from the commonwealth treasurer, to draw on the town or city treasurer for the amount. If the treasury did not contain the full amount, a sufficient sum was to be borrowed and a tax imposed to meet the deficit. This is the present method of collecting commonwealth taxes from the towns and cities. The taxes of unorganized towns and gores are still collected in the old way, the commissioners making out rate-bills and delivering them to the collectors whenever a tax is levied.

§ 6. *Exemptions.* The general exemptions from taxation have been referred to in chapter IV. A few words should be said about special exemptions. When the University of Vermont was incorporated, in 1791, in addition to exempting the polls of the officers and students, the charter declared the estate of the institution, real and personal, to the amount

¹ *Laws*, 1882, chap. cvi, p. 92.

² *Ibid.*, 1884, chap. i, p. 3.

of £100,000, to be exempt. As other educational institutions were incorporated, exemptions from taxation to a certain amount were made, and occasionally one was exempted from all property taxes. The polls of the officers and students, also, were exempted. The exemptions as to real estate at length became general, while the practice of exempting the officers and students from poll taxes was dropped in the early part of the century.

The most notable exemption for the benefit of an educational institution was that of the township of Wheelock, which in 1785 was given to Dartmouth College. The charter of this town declared that

the land and tenements in every part of said township, or precinct, shall forever be free and exempt from public taxes, that is to say, so long and while the income and profits shall be actually applied by said president and trustees, and their successors, to the purposes of said college and school.

Under this provision no commonwealth taxes have ever been laid on the lands of the town leased by the college trustees. Up to 1820, however, local taxes were laid on these lands and their improvements, but from that date until 1858 no taxes whatever were laid upon them. In 1857, the legislature allowed the town to return to the former practice of assessing local taxes on this property, and the act was held to be valid on the ground that the term "public taxes" as used at the time the charter was granted meant state taxes in distinction from town and other local taxes.¹ The greater part of the lands of the town, held by long leases, was conveyed by warranty deeds after an enabling act was passed by the legislature of 1851. The college now receives an annual income of about \$500 from Wheelock.

Manufacturing began in Vermont a few years before the war of 1812, and all the companies incorporated from that

¹ *Morgan vs. Cree*, 46 Vt., 773.

time on were given special immunities. The two cotton and woolen mills first incorporated (in 1808) were exempted for fifteen years. With other companies the legislature was not so generous, and about 1830 special exemptions ceased. Since the civil war general laws favoring manufacturing companies have been passed.

The earliest law to assist transportation companies was that of 1815, exempting steamboats on Lake Champlain from taxation for a year. This was decidedly special, for the act granted to one company the exclusive right to navigate the waters of the lake within the commonwealth. The discrimination was afterwards pronounced unconstitutional. Canal companies incorporated in the decade after 1825 were usually exempted from taxation for ten years. The first railroads fared exceedingly well, and the Vermont Central in its first charter was exempted for twenty years. A later charter issued to this road (in 1843) provided that "the stock, property and effects of said company shall be exempt from all taxes levied by or under the authority of this state." This sweeping exemption was the occasion of much complaint in later years, but not until 1882 was a means found of compelling the company to pay taxes. In that year an act was passed denying the exemption to the company while the road was in the hands of any persons or corporation except the Vermont Central Company itself. The road had become a part of the Central Vermont, and there was no alternative but to submit to the inevitable.

§ 7. *License and Other Fees.* Fees have played a somewhat important part in the commonwealth revenue, especially within the past dozen years. The earliest licenses requiring fees were liquor licenses, issued by order of the Council of Safety in 1778, as a police measure rather than a source of revenue.¹ The fee charged for these licenses was equivalent

¹ *Governor and Council*, vol. i, p. 210.

to about \$1. The system of licensing inn-keepers was further developed in subsequent years, but the income was transferred to the county treasuries, and the subject properly belongs to a discussion of county revenue.

Licenses for peddling were required at an early date, and they are still continued. The first act was that of 1806.¹ The licenses were granted by the judges of the county courts, and the fee was \$20 each year. In 1821 the following schedule was adopted: For every hawker or peddler travelling on foot, \$50; for every such person with a single horse or other beast, \$70; for every such person with a cart, \$100.² In 1822 these fees were reduced to \$30, \$40 and \$50, respectively;³ and a further reduction in the three classes was made in 1833, when the fees were placed at \$10, \$15 and \$20.⁴ The proceeds of these licenses after 1846 were divided among the counties, and the fees charged were: If the person travelled on foot, \$15; if with a wagon or other vehicle, \$40; and if he carried for sale "any plaited or gilded ware, jewelry, watches, or any patent medicine, or any compound medicine, the composition of which is kept secret from the public," \$100.⁵ The county clerks were now to issue the licenses. The fees for the second and third classes were in 1847 reduced to \$30 and \$60 respectively.⁶ The revenue from this source, which has been quite small since the civil war,⁷ is still received by the commonwealth and distributed to the counties.

License fees were formerly received, also, for selling lot-

¹ *Laws*, 1806, chap. cxvi, p. 179.

² *Ibid.*, 1821, chap. xvii, p. 85.

³ *Ibid.*, 1822, chap. xix, p. 21.

⁴ *Ibid.*, 1833, chap. xii, p. 10.

⁵ *Ibid.*, 1846, chap. xxvi, p. 28.

⁶ *Ibid.*, 1847, chap. xxx, p. 24.

⁷ The receipts for the fiscal year ending June 30, 1893, were \$250.

⁸ One of the articles for peddling which a license was required was tea. In this respect the law, in 1887, was declared to be repugnant to the constitution of the United States, in the case of *State vs. Pratt*, 59 Vt., 59.

tery tickets. In 1826 the fee was placed at \$500, and in 1827 it was raised to \$1000. The recognition of lotteries was not of long duration, however, and in the course of the next decade a prohibitory law was adopted. Before 1835 travelling "shows" were compelled to pay fees to the town authorities, and in that year the latter were ordered to turn the receipts into the commonwealth treasury.¹ Eventually the commonwealth itself issued licenses to circuses, the present fee for which is \$1000. The cities and villages in which exhibitions are made also issue licenses and charge a smaller fee.

Other license fees or taxes which have contributed to the revenue of the commonwealth have been those on foreign insurance companies, commercial fertilizer companies, and Vermont corporations. In 1874 it was provided that each foreign insurance company pay as a license fee \$5. Insurance brokers were obliged to pay \$10 each for their annual licenses.² When the companies made their annual statements to the insurance commission, they also were obliged to forward \$20 each as a fee. Provision was made for reciprocity with other commonwealths, if the latter imposed higher fees than Vermont. The law in regard to the fees of foreign insurance companies is still in this form. Since 1882 commercial fertilizer companies have been charged a license fee, which was fixed in that year at \$50 for each brand.³ In 1888 the fee was placed at \$100, and one license is sufficient to cover all brands manufactured by one person or company.⁴ License fees for corporations organized under the laws of Vermont were established by the corporation tax law of 1890.⁵ Each corporation having a capital stock or deposits of \$50,000 or less, is required to pay an annual

¹ *Laws*, 1835, chap. xv, p. 16.

² *Ibid.*, 1874, chap. x, p. 23.

³ *Ibid.*, 1882, chap. cxix, p. 101.

⁴ *Ibid.*, 1888, chap. cix, p. 119.

⁵ *Ibid.*, 1890, chap. iii, p. 11.

fee of \$10, and for every \$50,000 or fractional part thereof above \$50,000, \$5; but no fee can be over \$50.

Little need be said as to court fees. They have always been nominal. It is only within the last dozen years that the probate courts have paid their way; but the increase in revenue has been due principally to better administration. Since 1874 the fee for letters of administration or testament has been \$2 for estates having a value between \$150 and \$5,000, and when the value exceeds \$5,000, an additional \$2 is paid for each \$5,000 or fraction in excess of \$5,000.¹

§ 8. *Taxes on Corporations.* Up to 1882 corporations, as a rule, were taxed directly only on their real estate, while the value of the capital stock, less the value of the real estate, was listed to the shareholders. Very early, however, the custom of also taxing corporations directly on their business was begun, the corporations affected being exclusively banks and insurance companies. The first provisions were special, and were embodied in the charters of the corporations. The Bank of Burlington received its charter in 1818, and in the instrument it was provided that it should pay to the commonwealth treasury six per cent. of its profits.² Other banks were incorporated in the next few years, with the same provision as to taxes. Then, in 1824, came the incorporation of the first insurance company—the Vermont Fire Insurance Company—and in its charter yearly payments of six per cent. of the profits were enjoined.³ Companies incorporated later were treated in the same way. In 1825 the agents of foreign fire insurance companies were commanded to execute bonds for \$500 to secure the payment into the commonwealth treasury of eight per cent. on all premium receipts.⁴ This act continued in force until 1830, when it was repealed. A special act affecting the

¹ *Laws*, 1874, chap. liii, p. 112.

³ *Ibid.*, 1824, chap. lv, p. 91.

² *Ibid.*, 1818, p. 192.

⁴ *Ibid.*, 1825, chap. xxix, p. 30.

Connecticut River Canal Company, in 1829, made provision for the taxation of profits when they exceeded six per cent. of the capital. When the profits were between six and twelve per cent., one-sixth of the excess over six per cent. was to go to the commonwealth; and when they were over twelve per cent., one-fifth was to be paid in.

Between 1830 and 1840 a somewhat varying policy regarding banks was pursued. In the former year the charter of the Bank of Burlington was renewed, and a new provision was made for taxes on profits.¹ The rate now became six per cent. on the profits from stock owned in the commonwealth, and ten per cent. on the profits from stock owned elsewhere. This discrimination against non-resident holders of stock was followed in the case of all banks for the next few years, but the rates were not the same. Thus, in 1831, the Bank of Woodstock was incorporated, and a tax of ten per cent. on the profits from home stock and twelve per cent. on those from foreign stock was imposed on it.² The original practice of taxing all profits at six per cent. was resumed in the case of the Rutland Railroad bank in 1836.³ In 1839 the rule of taxing the banks at the rate of one-third of one per cent. of the capital stock paid in was tried.⁴ But the rate was not uniform; in some cases it was one-half, instead of one-third, of one per cent. This method of taxation continued but one year. In the general banking act of 1840 all banks were commanded to pay to the commonwealth a tax of one per cent. of the capital stock paid in, "as a tax upon the income of such bank;" but this was in reality a measure adopted to secure the holders of Vermont bank bills, for the tax was made obligatory only when banks failed to keep sufficient deposits in Boston to insure the re-

¹ *Laws*, 1830, chap. xlv, p. 55.

² *Ibid.*, 1831, chap. xlii, p. 81.

³ *Ibid.*, 1836, chap. xxxviii, p. 79.

⁴ *Ibid.*, 1839, chap. i, p. 35.

demption of bills at par.¹ As a device for keeping the bank bills up to their face value it succeeded admirably; but in proportion as it met its primary object, it failed to add to the revenue of the commonwealth. But at that time the plan of taxing banks and insurance companies directly, as well as through the stockholders, was in less favor; and as the charters granted previously to 1840 expired, no provision was made, either in the new charters or by a general law, for taxing dividends. It was now thought sufficient to tax the holders of stock.

The business of foreign health and life insurance companies became taxable by laws passed by the legislature of 1852.² The rate was one-half of one per cent. on all premiums and assessments received within the commonwealth. But in 1854 the same tax was imposed on foreign life insurance companies doing business in Vermont as the commonwealth by which such companies were incorporated imposed on Vermont companies.³

For the next twenty-five years no legislation of importance affecting corporations was enacted, save an assessment on railroad companies for the purpose of paying the salary of a commissioner. The practice began in 1855, and the amount was apportioned among the railroads in proportion to the time devoted to particular roads and the expense incurred.⁴ The appointment was made by the treasurer.

In the year 1878 began the series of laws on the taxation of corporations which culminated in the general law of 1882. Since the first taxes on the profits of banks and insurance companies, the method had been to tax the stock or other interest in corporations in the hands of the holders, exactly as other personal property was taxed, and let that end the

¹ *Laws*, 1840, chap. i, p. 7.

² *Ibid.*, 1852, chaps. xlv, xlvi, pp. 40, 50.

³ *Ibid.*, 1854, chap. xxxii, p. 37.

⁴ *Ibid.*, 1855, chap. xxvi, p. 28.

matter. Now the movement was on the corporations themselves. Savings banks, savings institutions and trust companies, were the first variety of corporations to be directly taxed, but the greater part of the proceeds of the tax were at first distributed to the towns in proportion to the amount of deposits owned in each town. The reform was effected in 1878, at the suggestion of the inspector of finance. Only deposits in excess of \$250 had, previously to this time, been taxed to depositors, and the exemption had led to abuses. On this point the inspector said:

I am satisfied from what I have been able to learn that a very small proportion of the deposits in savings banks, under the present law, are reached for taxation. In one of the largest banks in the state the treasurer was able to return for taxation, under the present law, only about *one-tenth* of its total deposits, from the fact that deposits, when made, are in many cases divided into sums of \$250 or less, and placed to the credit of different persons, wrong residences and fictitious names given in some cases, and the law otherwise avoided; and, as in the case named above, some of the banks hold large deposits of non-residents, which of course escape all taxes.¹

To defeat this deception, the plan of the inspector, that a tax of one-half of one per cent. on the total deposits and accumulations, after deducting the value of the real estate, be paid into the commonwealth treasury, was adopted and enacted into law.² The tax was in lieu of all taxes on deposits. The act did not apply to any institution which paid to the United States government a tax equal to one-half of one per cent. of the capital and deposits.³ It was a step in the direction of commonwealth revenue, for it led to the provision in the act of 1882 by which the tax on deposits in sums

¹ *Vermont State Officers' Reports*, 1877-8, p. 222.

² *Laws*, 1878, chap. iii, p. 18.

³ The deposits of such companies continued to be taxable to the depositors themselves.

of less than \$1500 went to the commonwealth treasury. As it then stood, moreover, a certain amount came to the commonwealth, for only the tax on home deposits was distributed to the towns; the portion derived from the deposits of non-residents remained in the treasury. In the fiscal year ending on June 30th, 1880—the first year after the law was passed—the commonwealth received \$10,487.22 out of the total of \$33,900.33.¹

The practice of taxing deposits in savings banks had been in vogue in all the New England commonwealths, and had worked well from a fiscal point of view. The ease of collection was not the least attractive feature which it possessed. The wisdom of the policy of allowing no exemption would be questionable if it were possible to distinguish the *bonâ fide* small depositors from those who make the exemption the means of escaping taxation. But wherever exemptions have been tried, they have led to abuses which fully counterbalance the social advantages of lightening the burden of that most deserving element of every community which out of slender incomes lays by something for future needs. New York, which has pursued the policy of exemption to a certain amount, has found the evil of evasion ever present.² The point in question is one in which a balancing between good and bad results is involved. Is the encouragement of small savings by working people sufficiently worthy of approval to outweigh the injustice and evasion inseparably connected with exemptions? Perhaps the better view has been taken in Vermont, if we regard one of the first duties of the state to be to strengthen the morals of the people in all practicable ways. The tax, moreover, is not heavy, and the disposition on the part of working people to save, which after

¹Report of the inspector of finance, 1880, p. 8.

²Report of the commission of 1870, p. 36.

all is the thing to be considered,¹ is probably not affected. In reaching non-resident depositors the law secured a distinct gain in revenue, for the former law failed to touch their case.

Express and telegraph companies were the next to be included in direct taxation. In 1880² they were assessed at the rate of two per cent. of the gross receipts derived within the commonwealth, in lieu of all other taxes upon personal estate. It now remained to bring in insurance, railroad and other transportation companies, and this was done by the general act of 1882.³ This act, which marks an epoch in Vermont taxation, was based mainly on gross receipts, but different rates were prescribed for different classes of corporations. It was denominated a tax upon "the corporate franchise⁴ or business in this state of railroad, insurance, guarantee, express, telegraph, telephone, steamboat, and car transportation companies, savings banks, savings institutions and trust companies." By the act a commissioner of taxes was appointed, who prepared and sent to the officers of the corporations blanks for a statement of all facts necessary for estimating the tax. These blanks were three in number, one of which was to be returned to the commissioner, one sent to the commonwealth treasurer, and one retained, all having been filled out, signed and sworn to. With the blank returns to the treasurer was to go the tax due. Failure to make returns to the commissioner or to pay the tax within

¹ "Taxation is drawn from the total stock of wealth, including at any given time both capital and revenue. The real aim should be to so direct it as to interfere to the smallest extent with the action of the forces that promote accumulation." Bastable, *Public Finance*, p. 268.

² *Laws*, 1880, chap. lxxxii, p. 83.

³ *Ibid.*, 1882, chap. i, p. 3.

⁴ In the case of *Rutland Railroad Co., vs. Central Vermont Railroad Co.*, in which the law was declared unconstitutional in so far as it taxed gross receipts from inter-commonwealth commerce, the court denied that it was a franchise tax, holding that it was a tax on gross receipts. 63 Vt., 1.

the required time involved the payment of \$100 for each day's neglect. If foreign insurance companies were negligent, it was the duty of the insurance commissioner to revoke their licenses.

The tax on railroads was on the entire gross earnings, if the road was situated wholly within the commonwealth; and if the road was situated partly within and partly without the commonwealth, it was on such proportion of the gross earnings as the mileage of the trains run within the commonwealth bore to the mileage of all trains run on the main line of the road. The rates were two per cent. on the first \$2000 a mile, or the total earnings, if they were less than that sum; three per cent. on the first \$1000 or part thereof above \$2000 a mile; four per cent. on the first \$1000 or part thereof above \$3000 a mile; and five per cent. on all earnings above \$4000 a mile. The method of assessing railroads followed Michigan and Wisconsin in principle, but the rates of neither of those commonwealths were adopted. Insurance companies, both home and foreign, paid a tax of two per cent. on the gross amount of premiums and assessments received in their business within the commonwealth,¹ and, in addition to this tax, home life insurance companies were assessed one-half of one per cent. in their surplus over a reserve of four per cent. on existing policies. The value of real estate was deducted from this surplus.² Savings banks and savings institutions were taxed at the rate of one-half of one per cent. of the average amount of deposits and accumulations, with the value of the real estate owned by

¹ A deduction from the gross amount of premiums and assessments was made of unused balances on notes taken for premiums, sums paid for the return of premiums on cancelled policies, dividends to policy holders, and sums paid for reinsurance in authorized companies.

² In 1888 an act was passed providing for reciprocity in the taxation of foreign insurance companies, if any other commonwealth imposed higher taxes, fees, etc., than Vermont. *Laws*, 1888, chap. cxv, p. 125.

the corporation and the amount of individual deposits in excess \$1500 each deducted; and trust companies and "savings banks and trust companies" were taxed at the rate of one per cent. of their average amount of deposits, with such percentage as any such institution paid to the United States government as a tax, the amount of assets invested in real estate, and individuals deposits in excess of \$1500 each, deducted. The deposits in excess of \$1500 were listed to depositors in the towns in which the latter lived. Express, telegraph and telephone companies were assessed at the rate of three per cent. of their gross receipts from business done in Vermont.¹ Steamboat, car and "transporation" companies paid at the rate of two per cent. The tax commissioner was permitted to examine, under oath, any officer of any corporation or company, or any persons, within the scope of the act, and to examine any books of account. The penalty for refusing to be sworn, to answer inquiries, or to show books of account, was not less than \$500 nor more than \$5000. If the commissioner found that, owing to an incorrect return, or to any other cause, the tax paid was too small, he could assess an additional tax.

The act relieved the real and personal property, from all other taxation, and such property was not to be listed. All provisions in charters of corporations exempting them from taxation, so far as such provisions conflicted with the act, were expressly repealed. This was aimed especially at the Vermont Central railroad company. The road was in the hands of receivers, and the mortgage held on it by the Central Vermont road was foreclosed in the following year. To add still greater clearness as to its purpose to put an end to the immunity of this road from taxation, the legislature

¹ From the gross receipts of telephone companies was deducted the amount paid to telegraph companies with which they were connected.

passed an additional act¹ to the effect that no person or corporation except the Vermont Central itself should be entitled to claim or have any exemption from taxation. These provisions had the effect of disposing of the long standing exemption, although the Central Vermont company successfully resisted the payment of taxes for the first six months of 1883, during which the foreclosure was taking place.²

Such a radical innovation on the practice of years as this act effected, was attended with some misgivings as to its success; but a revenue of \$196,678.51 was derived from it in the year 1883, and the cases of friction in administration and of points of weakness in the phraseology of the act were few and comparatively unimportant. The tax was promptly paid by all but four corporations, two of which were in a condition of financial confusion which appeared to them to justify a refusal to pay for one of the two six months' periods of 1883. These companies were prosecuted, but the cases were dropped by legislative sanction before judgment had been rendered. All the trust companies paid their taxes (amounting in all to \$56,506.70 for the year 1883) under protest, claiming that there was an unjust discrimination between them and savings banks, in that the latter were taxed at the rate of but one-half of one per cent. on deposits and accumulations, while they were taxed at the rate of one per cent. on their deposits. It cannot be said, however, that the law fully met the expectations of its framers. It had been hoped to derive from it a revenue nearly sufficient to meet the expenses of the commonwealth, and provision was made for the apportionment of whatever grand list taxes might be necessary among the towns on the basis of population, thus doing away with any need of equalizing boards.

¹ *Laws*, 1882, chap. vi, p. 23.

² See reports of the commissioner of taxes for 1883-4 and 1885-6, in *Vermont State Officers' Reports*.

But the revenue proved to be inadequate, and it was found necessary to still rely to a considerable extent on grand list taxes.¹

Several amendments to the law were adopted in 1884, the most important being that by which the discrimination between trust companies and savings banks was removed.² The tax on savings banks, savings institutions and trust companies was now fixed at six-tenths of one per cent. on the average amount of deposits and accumulations, the average amount of assets invested in real estate and the average amount of individual deposits in excess of \$1500 to each person being deducted. In 1886, the ruling of the commissioner that the term "railroads" included street railroads was sustained by the legislature.³

The tax on the gross receipts of transportation companies doing an inter-commonwealth business was declared unconstitutional by the Vermont supreme court in 1890,⁴ and a

¹ Professor Ely is wrong in saying (*Taxation in American States and Cities*, p. 261) that Vermont levies no commonwealth tax on real estate. The tax on the grand list has never been wholly abandoned.

² *Laws*, 1884, chap. xliii, p. 45.

³ *Ibid.*, 1886, chap. iv, p. 5.

⁴ *Rutland Railroad Co. vs. Central Vermont Railroad Co. et al.*, 63 Vt., 1. Judge Ross dissented, holding that the tax was one on property and franchise, and not on gross earnings *in specie*. In his opinion he took substantially the same position as that assumed later by the United States supreme court, when in *Maine vs. Grand Trunk Railroad Co.* it reversed its former position. The court had held in *Fargo vs. Stevens* (121 U. S., 230) and *Philadelphia and Southern Mail Steamship Co. vs. Pennsylvania* (122 U. S., 326) that a tax on gross receipts derived from inter-commonwealth traffic was contrary to that provision of the constitution which gives to Congress exclusive power to legislate on such traffic. In *Maine vs. Grand Trunk* this construction was not explicitly denied; that is, the unconstitutionality of a tax in gross receipts was still affirmed, but a franchise tax, measured by gross receipts, was permitted. Judge Ross, in dissenting from the Vermont decision, said: "On this construction Section 11 of the act declares that the value of the railroad rolling stock and right to operate them in this state is, for the purpose of taxation, to be determined by the gross earnings derived from such operation thereof per mile within this state. Section 12 rates the tax upon the property or franchise so valued, and Section 13 declares when the tax

revision of the law was rendered necessary. The revision¹ was more extensive than the decision demanded, as the opportunity was embraced to make other changes which experience had indicated as desirable. But the law remained the same in effect. Payments are now made within thirty days of the time within which returns are to be made to the commissioner and treasurer. Instead of basing the tax on railroad companies on their gross receipts, the law provides for elaborate returns as to the value of the property of such corporations, including the market value of stock and bonds, for the purpose of appraisal by the commissioner. A tax of seven-tenths of one per cent. is assessed upon the valuation. The commissioner is to take into consideration the corporate franchise in each case, and the appraisal is partly made on gross and net earnings. If the railroad does an inter-commonwealth business, the total valuation is divided by the number of miles of the main line to get the average value per mile, and this is multiplied by the number of miles within the commonwealth to find the value for purposes of taxation. The lieutenant-governor, auditor of accounts and secretary of state are a board of appeal from the appraisal made by the commissioner. This provision applies to steamboat, car and "transportation" companies, as well as railroads. In thus making the tax one on franchise and property, instead of gross receipts, the Connecticut law for railroads was substantially followed. But to retain in fact the original principle, an alternative to the above method—a tax on gross receipts—was offered,

shall be paid. This construction makes all the provisions of the act on this subject harmonious, renders the tax a tax upon the property or franchise, to be paid by the owner of the property or franchise, and avoids all constitutional objection. I do not find anything in *Steamboat Co. vs. Pennsylvania*, *supra*, nor in any of the decisions there referred to and commented upon, which militates against this construction of this act."

¹ *Laws*, 1890, chap. iii, p. 5.

also; and its simplicity and economy have led to its general adoption.¹ The rate on gross receipts of railroads is two and one-half per cent.; and for steamboat, car and "transportation" companies, two per cent. Telegraph companies, by this act, were to pay ten per cent. on their gross receipts earned within the commonwealth; telephone companies, three per cent.; express companies, four per cent., and sleeping-car companies, five per cent.

The tax on insurance and guaranty companies remains the same as in 1882, and the only change from the law of 1884 regarding savings banks, savings institutions and trust companies is an increase of the rate from six-tenths of one per cent. to seven-tenths. A tax of one per cent. was laid on the aggregate amount received by building and investment companies to be loaned without the commonwealth, and upon the aggregate amount of bonds, mortgages, choses in action and securities of any kind negotiated upon property without the commonwealth; but any such company or persons doing the business mentioned can avoid payment by giving to the tax commissioner the names and residences of persons, companies and corporations from whom the money is received and to whom the bonds, mortgages, etc., are negotiated, together with the amount received. In the event of such returns being made to the commissioner, the latter assesses the tax upon the person, company or corporation actually owning the money. This tax on building and investment companies is not to be imposed, however, upon corporations organized in the commonwealth which pay taxes upon their capital stock, premiums or deposits, unless the sales of bonds, mortgages, etc., exceed the total of capital stock, premiums and deposits. Tax-payers are required by the listing inventories to state through what investment

¹ All but two companies paid on gross earnings in 1891. One of the two was a village street car company. See report of the tax commissioner, 1891-2, p. 4.

company, firm or person loans without the commonwealth, stock, bonds, choses in action or securities of any kind, on which exemption from taxation is claimed, were negotiated.

During the months immediately following the passage of the act, the express companies sought to avoid the increase in the rate adopted for them (from three to four per cent.) by charging their patrons rates enough higher to increase their receipts by the additional part of the tax. At a special session of the legislature in the following August the arrangement was summarily disposed of by an act providing that no express company should charge a greater sum than was provided for by the schedules of tariff of the companies in force October 1st, 1890. Fines for violation of the act were provided. The express companies immediately resumed the former rates.

The only change in the law made at the session of the legislature in 1892 was in reference to telegraph companies. The rate for such companies had in 1890 been fixed at ten per cent. on gross receipts, with no option, contrary to the advice of the tax commissioner, who drew up the law of that year and proposed a rate of three per cent., with an option. The Western Union Company refused to pay its tax, alleging that the rate was so high as to be a violation of the constitutional provision that property shall not be taken except by due process of law, and, moreover, that any tax on gross receipts assessed against the company would be unconstitutional on account of the inter-commonwealth character of the business. The points seemed to be so well taken that an act¹ was passed giving telegraph companies the option of paying at the rate of sixty cents per mile of poles and one line of wire and forty cents per mile for each additional wire operated within the commonwealth, or of paying three per cent. of the gross earnings received within the

¹ *Laws*, 1892, chap. xv, p. 21.

commonwealth. The suit in chancery of the Western Union Company was discontinued, and the company paid into the treasury \$2,500 in lieu of the taxes assessed against it for two years under the act of 1890, and of all penalties for non-payment.

The revenue from corporation taxes has been steadily growing, and since 1890 it has constituted by far the greater part of the ordinary commonwealth revenue. The total receipts from this source have been as follows, exclusive of corporation license fees :

1883	\$196,678.51
1884	205,225.33
1885	200,685.70
1886	220,702.05
1887	238,989.06
1888	245,307.77
1889	268,153.84
1890	250,285.00
1891	307,484.87
1892	335,992.64
	<hr/>
	\$2,469,504.77

§ 9. *The Present Revenue.* According to the reports of the treasurer, the principal receipts of the commonwealth for the years ending on June 30th, 1892, and 1893, were from the following sources :

	1892.	1893.
License fees of commercial fertilizer companies.....	\$1,300.00	\$1,300.00
Fees from foreign insurance companies.....	5,205.00	4,784.00
Fees from judges of probate	17,554.75	12,959.07
Judgments and balances from county clerks.....	50,957.94	40,329.18
License fees of corporations	4,190.00	6,695.00
Corporation taxes in 1891 and 1892.....	307,484.87	335,992.64
Grand list tax of 1891.....	272,858.85	
Direct tax refunded by U. S. Government.....	179,407.80	

The corporation tax is an annual charge on the corporations and is looked to as the main source of revenue. Grand list taxes are now levied to make good the gap between the

total of corporation taxes, fees, etc., and the amount demanded by the total expense. As for the past few years they have been levied biennially they in reality yield less than half the amount produced by the corporation tax. The large sum received from the refunded direct tax was wholly unusual and should not of course be regarded in any estimate of the ordinary revenue of the commonwealth.

CHAPTER VI. COUNTY REVENUE.

§ 1. *License Fees from Inn-keepers.* Up to the second half of this century the counties relied for revenue almost altogether on fees for liquor licenses.¹ The licenses were granted by the county courts. In 1787 the maximum limit for fees was placed at £10 per annum. A law of 1798² allowed the court to fix the fees at any sum between \$1 and \$30, and in 1802 the limits were placed at \$1.50 and \$15.³ With very little change the law continued in this form until 1846, when a new schedule of rates, varying from \$3 to \$50, was adopted. The whole subject of licenses was at one time⁴ given to the towns, but at the following session of the legislature, the former law was restored. The law of 1846 continued until 1850, when the towns again took charge of the business, under a local option law. With the adoption of a policy of prohibition in 1852 all revenue from this source ceased.

§ 2. *Taxes on the Grand List.* The exceptional expenses of the counties have always been defrayed by grand list taxes, and since liquor license fees were abandoned, nearly the entire expense has been met in this way. Up to 1872 each tax was separately authorized by the legislature. Some of the earlier taxes were made payable in kind, if the tax-payer chose, as in Rutland county in 1791 and 1792. In the former year the tax of a half-penny on the pound could be paid in "neat cattle, beef, pork, or merchantable grain; or in court orders or due bills, or hard money;" in

¹ Hemenway's *Vermont Historical Gazetteer*, vol. ii. p. 96.

² *Laws*, 1798, p. 16.

³ *Ibid.*, 1802, chap. cv, p. 169,

⁴ In 1833.

1792 it could be in "good merchantable wheat, at three shillings per bushel, or in orders drawn by the County Court, or in lawful money." The earlier taxes were usually for building or repairing county buildings, and in general the expenses of the county, which in New England has had little of the importance as a political division which it has enjoyed in the southern, middle Atlantic and western commonwealths, have been for court purposes. In 1872 an important reform in county taxation was effected. The assistant judges of the county court were instructed to ascertain the indebtedness and make an estimate of the ordinary expenses of the county for the ensuing year, on or before December 10th each year, and if they regarded it necessary an order was to be sent to the county treasurer, who by January 1st was compelled to issue a warrant to the collector of each town for the amount due. From 1882 to 1892 county, as well as commonwealth, taxes were apportioned to the towns on the basis of population. The legislature still provides for unusual expenses by special acts authorizing grand list taxes.

§ 3. *Other Sources of Revenue.* Since 1846 the receipts from peddlers' licenses have been distributed to the counties in proportion to population. This source of income now yields scanty returns. The proceeds of the tax on bank stock owned by non-residents also were given to the counties for a time after 1854.

CHAPTER VII. LOCAL REVENUE.

§ 1. *Taxes on Proprietary Rights.* In the first years of settlement in all the towns, after the Revolution as well as before, the taxes on proprietors' rights in the land were more important than grand list taxes. The scope of these taxes was indicated in Chapter II. Not only were they levied for surveys of land, but roads and even schools were afterwards supported by them. One of the earliest acts referring to proprietors' meetings authorized such meetings¹ to "transact any business which may concern the propriety, as the promoting of settlement, and laying out and making division of lands, laying out roads, and any other business whatsoever which concerns the propriety." Proprietors had a number of votes in the meetings proportionable to their interest in the land, and the taxes were in the form of rates on the rights. Proprietors' meetings were held for many years—even into the present century—but their importance diminished rapidly as the towns became organized and assumed control of local matters.

§ 2. *Lotteries.* Vermont came into being too late for the heyday of lotteries in America, but she nevertheless had a slight experience with that once popular means of raising public revenue. Her connection with them was mainly through the towns, however, the only exception to the rule being the license fees imposed in 1826-7 on the sale of tickets within the commonwealth. The requests for permission to open lotteries were numerous, but the General As-

¹ *Laws*, 1787, p. 121.

sembly exercised great care in making grants, and no general demoralization ever resulted. The last grant was made in 1804, and before that year public sentiment had become averse to the practice. By far the larger number of grants were for purely public purposes, such as making roads, building bridges or erecting a court house; but a number were designed to assist individuals in some private enterprise or to compensate them for serious loss by fire or other accident. Two cases in which lotteries were permitted for erecting breweries are recorded. The amounts which could be raised by the lotteries varied from £150 to £1,200. The conservatism of the General Assembly on this subject will be seen from the fact that the number of lotteries granted from 1783 to 1804 was but twenty-four.¹

§ 3. *Land Taxes.* Land taxes were formerly prominent in local taxation. At first they were levied for a number of purposes, including houses for public worship, school-houses and bridges.² A general act of 1781 allowed the towns to vote land taxes for these purposes at their pleasure, so long as the rate of two pence per acre was not exceeded. This rule gave way to the practice of the General Assembly of allowing only expressly named towns to tax lands at a specified rate for making and repairing roads and building bridges, and the latter method continued for many years.³ It seems to have been assumed that the owners of land, whether residents or non-residents, were interested in these objects in proportion to the land possessed. At first the selectmen levied the tax and had charge of the work of expending the money thus raised, but later the General Assembly assessed the tax directly and appointed commissioners to ex-

¹ See Z. Thompson's *Civil History of Vermont*, part ii, p. 222, for a list of lotteries granted.

² *Laws*, 1781, p. 440 of Slade's *State Papers*.

³ *Ibid.*, 1786, p. 509 of Slade's *State Papers*.

pend it. "Public rights" were always excepted in assessing these taxes. The rates varied greatly, but three and four cents per acre were the more common levies in the later years during which this tax was in vogue.

About 1840 land taxes became unpopular, and after 1842 none were voted for some years. In 1848, however, one of six cents per acre was levied on Bradley Vale, in exactly the same manner as the practice had been before 1840. The revival met outspoken opposition. The committee of the Council of Censors on the powers of the constitution, to whom the query whether or not this tax was "unjust and unequal" was referred in the following year, reported:

This mode of raising taxes for the building of roads has, from the early formation of the government, been adopted, and when the practice began to prevail there might have been an occasion for it that does not now exist. There may be some reason to doubt the constitutionality of that mode of raising taxes.¹

The Council itself did not feel competent to pass upon the constitutionality of the tax, but its note of disapproval was sufficient to put an end to land taxes. Nevertheless, there was at least one such tax after this. In 1859 the legislature assessed a tax² of \$2 on "each lot" of land in Lowell for making a road from Lowell Four Corners to Irasburgh. But this was an exceptional instance.³ At the breaking out of the war, it may be said, this form of taxation had wholly disappeared in Vermont.

§ 4. *Taxes for Religious Worship.* The earlier settlers were New England men, with all the New England traditions. They believed fully in a connection between church

¹ *Journal of the Council of Censors*, 1849, p. 52.

² *Laws*, 1859, chap. cxiv, p. 151.

³ A legislative committee, reporting upon the subject, questioned the justice the tax, but acquiesced in it because the land-owners affected were unanimous requesting it.

and state, and they were practically unanimous in their belief in the Christian religion. A large majority, also, were Congregationalists; yet they did not attempt to force the tenets and practice of that sect upon the rest. They took a more liberal position, asserting that "every sect or denomination of Christians ought to observe the Sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God," but admitting that "no man ought to or of right can be compelled to attend any religious worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship." These sentiments were announced in the first constitution, and they are in the supreme law of to-day. Taking thus the middle ground of support for Christianity but non-interference in behalf of any sect of that religion, the Vermont law-givers proceeded to make provision for the maintenance of religious institutions, profoundly convinced that the good of their young community demanded state support in this direction as much as for the public schools established at the same time.

The act of 1781, by which towns were permitted to levy taxes on lands for meeting-houses, school houses and bridges, was the first authorization of taxation for religious purposes. It is significant that this act contained the proviso that "nothing in this act shall be construed to deprive any persons of privileges secured to them by the constitution." The act was succeeded in October of 1783 by one¹ "to enable Towns and Parishes to erect proper Houses for public Worship, and support Ministers of the Gospel," and under it religious worship was sustained by public support in a good share of the towns for nearly twenty years. The

¹ *Laws, 1783, p. 472 of Slade's State Papers.*

act allowed two-thirds of the inhabitants of any town or parish, in a meeting properly called, to vote taxes on the grand list for the erection of church buildings and for the support of ministers. The two-thirds of the inhabitants were to be "of similar sentiments with respect to the mode of worship," and at least twenty-five legal voters in the affirmative were needed to give legality to any vote. The provision in the interest of the rights of the minority is interesting. It was introduced by this preamble:

And whereas, there are in many towns and parishes within this state, men of different sentiments in religious duties, which lead peaceable and moral lives, the rights of whose conscience is not to controul; and likewise some, perhaps, who pretend to differ from the majority, with a design to escape taxation.

The enacting clause provided that every person should be considered as belonging to the majority unless he presented a certificate to the clerk of the town or parish from "some minister of the gospel, deacon or elder, or the moderator in the church or congregation," stating that the person belonged to that denomination. Until such a certificate was presented "such party shall be subject to pay all such charges with the major part, as by law shall be assessed on his, her or their polls or rateable estate." This provision gave opportunity for the members of the minor sects (of whom there were many in Vermont) to avoid being taxed for a service in which they did not participate; but no relief apparently was thought of for those who belonged to no sect of Christianity.

The law was on the whole satisfactory for some time;¹ yet opposition on the part of the minority showed itself quite

¹ Hon. Daniel Chapman, writing in 1849, said: "It was productive of great good; the people in different towns, collected from various parts of New England, more readily united for the support of public worship, in a mode to which they had been accustomed, than they would have done in any new mode."

early, and by 1801 it had increased to such an extent that in that year an amendment¹ to the act was voted by the General Assembly, repealing the clause requiring certificates from church officials and substituting one by which it became necessary for a voter, in order to avoid taxes for religious purposes, to deliver to the clerk of the town or parish the following declaration, with his name signed: "I do not agree in religious opinion with a majority of the inhabitants of this town (or parish)." But even this concession did not satisfy the discontented minority. The opposition to the principle of connection between church and state grew year by year, until, in 1807, the obnoxious act was repealed. Since that year religious organizations have had a purely private character, aside from the fact that in the towns organized under Vermont grants a small income from public land is annually divided among all denominations.

§ 5. *Taxes on the Grand List.* One of the objects for which taxes on the grand list were permitted after the Revolution was that referred to in the preceding section—the support of religious worship. Before this, however, while the war was still in progress, the towns were authorized² to tax their inhabitants "for the purpose of carrying on the war, for procuring a town stock of ammunition, for the support of the poor of such town, or any other purpose which they may find necessary, not inconsistent with the constitution of this state." This was ample authority for any taxes for general local purposes. A later act³ was to the same effect. It provided that the inhabitants of towns could "grant a tax upon themselves for support of the poor in such towns, for defraying their incidental charges, or for any other purpose which they may deem necessary, not inconsistent with the constitution and laws of this state." From this period until

¹ *Laws*, 1801, p. 17.

² *Ibid.*, 1780, p. 396 of Slade's *State Papers*.

³ *Ibid.*, 1787, p. 157.

the present time the towns have had a free hand in voting grand list taxes for the ordinary expenses. For unusual objects, such as assisting a railroad company, the permission of the legislature has been necessary; but this permission has been readily given. The original case in which aid to a transportation company was authorized was that of the Northern Lock Navigation company, to take stock in which towns were allowed to tax themselves, if they wished.¹ The company was engaged in the project of connecting the Hudson River with Lake Champlain. It was not until 1823, however, that the Champlain canal was completed. The towns were given the option of levying this tax upon the grand list or upon the land, but it was not to exceed six cents on the pound, or three cents an acre. The act was more important as a precedent than in its immediate effect, for the enterprise soon languished for the time. Taxes for local purposes have been and are still voted in town meetings, and are usually the vital question before those assemblages. The rates vary greatly between the different towns. In 1885, it was found² that the rate ran from a minimum of one cent to a maximum of \$3 on the dollar of the grand list, or from one-hundredth of one per cent to three per cent of the valuation for taxation. Fully one-half of the towns and cities, had rates in that year between forty cents and \$1 on the dollar. These rates are exclusive of highway and special taxes.

§ 6. *Collection.* Local taxes have been collected in a manner very similar to that described for commonwealth taxes. The first act³ on the subject provided that the selectmen deliver to the collector a rate-bill, and that an assistant or justice of the peace issue a warrant. The later laws

¹ *Laws*, 1796, p. 43.

² *Report of secretary of state on statistics of taxation.*

³ *Laws*, 1779, p. 312 of Slade's *State Papers*.

made no important modification until 1880, when the optional method mentioned in chapter V was adopted. Recent acts have simplified collections by allowing the selectmen in making out tax-bills to include all taxes due in one bill, although the separate taxes must be indicated, with the rate of each. The board of civil authority, consisting of the selectmen and justices of the peace, have power to abate taxes to an amount not exceeding one-twentieth of the amount of the tax bill. Abatements usually apply to persons who have died insolvent, moved out of the commonwealth, or are otherwise unable to pay, and to those in whose tax bills there is a manifest error.

§ 7. *Highway Taxes.* Highway taxes have been a distinct category in Vermont taxation since the New York laws on the subject were passed. For many years they were paid exclusively in labor, although opportunity was always given for money payments. After the Vermont government was organized, one of the first acts of the General Assembly was to pass "An Act for making and repairing public Highways," the chief provision of which was that every male between the ages of sixteen and sixty should work four days each year on the highways.¹ Ministers of the gospel were the only exception to the rule. The administration was simple. The selectmen made out a rate-bill, each person subject to the tax being rated at sixteen shillings per day. The rate bill was given to the surveyors, who took charge of the highway work and saw that each person whose name was on the list did his four days' work. The goods and chattels of those neglecting or refusing to work were levied upon, and a penalty for the refusal or neglect was also prescribed. In 1787, twenty-one and sixty years were made the limits of age,² and the exempted class was increased so as to include "ministers of the Gospel improved within their respective

¹ *Laws*, 1779, p. 329 of Slade's *State Papers*.

² *Ibid.*, 1787, p. 79.

towns, the President, Tutors and Students of Colleges for the time being and annual Schoolmasters." The rate was now fixed at four shillings, to correspond with the greater value of money after the close of the war. An act of 1792¹ authorized the division of towns into districts, and made rules regarding the use of teams, etc. If the four days' work proved insufficient, an additional tax could be voted by any town. In 1803 it was enacted that towns neglecting to repair their highways could be indicted.²

In the latter part of the last century and the first part of this, turnpike companies occupied a prominent place in the life and activities of Vermont towns. The leading highways were taken in charge by them, under charters from the General Assembly. The result was very much less attention to the subject of highways by the towns themselves. Usually the companies had entire control of repairs on their roads; but in the course of time it became the practice to allow the inhabitants of a town to work out their highway taxes on the turnpikes and thus avoid the payment of toll.³ Eventually the towns took possession of the turnpikes and tolls were abolished.

Before 1824 the highway tax was a poll tax; each adult male, with certain exceptions, worked at least four days, or paid an equivalent in money. In that year, however, it became a tax upon the grand list, and the rate was fixed at four cents on the dollar.⁴ In 1826 this rate was changed to six cents.⁵ At different times special inducements were offered for securing payments in money, instead of labor. Thus, in 1837, it was provided that if the tax was paid in money two-thirds only of the amount assessed need be paid.⁶ In 1838, three-fourths of the assessed tax was taken as a full

¹ *Laws*, 1792, p. 47.

³ *Ibid.*, 1815, chap. lxxx, p. 77.

⁵ *Ibid.*, 1826, chap. xxii, p. 13.

² *Ibid.*, 1803, chap. xcvi, p. 125.

⁴ *Ibid.*, 1824, chap. xxviii, p. 29.

⁶ *Ibid.*, 1837, chap. xxvii, p. 17.

payment in money.¹ The rate of the tax was fixed at eighteen cents on the dollar in 1842.² The towns were free to tax themselves to a greater amount than the stated rate, if they chose; the rate mentioned was the minimum on which the commonwealth insisted. The rate of eighteen cents on the dollar continued for over twenty years; but there were occasional changes of policy, such as allowing the towns to give the entire work of repairing roads and bridges to contractors.³ In 1858 it was made possible for towns to vote that the tax be paid in money, in which case the rate was fourteen, instead of eighteen, cents.⁴ An act of 1864 changed the rate to twenty-five cents, and when towns voted that the tax be paid in money it was twenty cents;⁵ and these rates continued until 1882, when they were changed to twenty and fifteen cents, respectively.⁶

Previously to 1886 the care of highways and bridges remained exclusively in the towns; but in that year the aid of the commonwealth was extended to those towns which had been compelled to maintain highways and bridges from which neighboring towns derived a good share of the benefit. Commissioners reported as to the proportion which each town and the commonwealth should pay, and the county court gave the final decision.⁷ This measure, which still obtains, proved to be the entering wedge of a reform in the management of highways and bridges which was effected in 1892.⁸ The office of surveyor was then abolished, and a road commissioner is now elected in each town. A tax of twenty cents on the dollar must be levied in each town each year, and an additional tax of five cents on the dollar must also be levied for payment to the commonwealth treasury.

¹ *Laws*, 1838, chap. xi, p. 8.

² *Ibid.*, 1856, chap. xxx, p. 33.

³ *Ibid.*, 1864, chap. lxxiv, p. 80.

⁴ *Ibid.*, 1886, chap. xvi, p. 12.

⁵ *Ibid.*, 1842, chap. xvii, p. 22.

⁶ *Ibid.*, 1858, chap. xxix, p. 32.

⁷ *Ibid.*, 1882, chap. x, p. 26.

⁸ *Ibid.*, 1892, chap. lvi, p. 54.

The five-cent tax is distributed among the towns, villages and cities on the basis of road mileage; and the poorer and less populous towns are in this way assisted in meeting the expense of repairing their highways and bridges. It should be said that none of this apportioned money can be devoted to a bridge or culvert having a span exceeding four feet. Payment by labor has been wholly eliminated from highway taxes by this act, which marks the end of a system over one hundred and twenty years old.¹ The New York highway tax acts have at last been supplanted.

§ 8. *Village and City Taxation.* What has been said thus far concerning local revenue applies mainly to the towns, which are the most important units in this largely agricultural commonwealth. As to incorporated villages and cities, it may be said in general that they have full power to levy taxes for the purposes for which they were incorporated. In the case of villages, the point in which they differ from towns, in respect to taxation, is that they usually are allowed to retain only a portion (frequently two-thirds) of the highway tax, the remainder going to the towns within which they are situated. The charters of both cities and villages make provision for special assessments for street improvements, and these are constantly becoming more important sources of revenue in the larger places.² Water rates, also, are a source of considerable revenue. The villages have, in many instances, absorbed the fire districts, which formerly were taxing bodies of minor importance. Village taxes are assessed upon that portion of the grand list which is included within the charter limits.

¹ Vermont has thus preceded her parent commonwealth in effecting this needed reform. New York still permits highway labor in payment of taxes.

² This first special assessment in Vermont was made in 1804, for lowering the falls of Otter creek. The sum of \$2,000 was raised for that purpose. *Laws*, 1804, chap. c, p. 130.

§ 9. *Public Domain.* The history of the public domain belongs to that of local revenue, but it can be but briefly referred to in this monograph. The charters granted by Governor Wentworth set apart in each town, besides five hundred acres for himself, a right for the English Society for the Propagation of the Gospel in Foreign Parts, one for a glebe for the Church of England, one for the first settled minister of any denomination, and one for town schools. The government of Vermont also made liberal provisions for religious and educational objects, one right in each township granted being reserved for a college, one for a county grammar school, one for town schools, one for the first settled minister, and one for the general support of the ministry. The grants to the Propagation Society and to the Church of England did not meet with much favor at the hands of a population among whom Episcopalians were comparatively few, and repeated efforts were made to divert them to the support of the schools. The church, however, stoutly resisted and carried its cases to the United States supreme court, winning in one, but meeting defeat in the other. The lands of the Propagation Society were finally restored to it by a decision in 1830, after a controversy of nearly forty years.¹ The glebe lands, on the other hand, were given to the support of the schools by a decision in 1815,² although after 1805 they had already been devoted to that purpose in all but a few towns. The rights designed for the first settled minister gradually came into the possession of clergymen and ceased to have public importance. The rights for the support of the "gospel ministry" still occupy a place in the finances of the towns chartered by the Vermont government. Formerly the proceeds were divided in proportion to the number of "rateable polls" in each society, but in recent years each

¹ Propagation Society *vs.* Town of Pawlet and Ozias Clarke, 29 U. S., 480.

² Town of Pawlet *vs.* Daniel Clark and Others, 13 U. S., 292.

society in the town has received an equal part. The legislature has charge of the rights devoted to the university and the county grammar schools. The town school lands furnish a small income in each town. In 1882 the appraised value of the lands devoted to religious uses was \$184,434; that of the school lands, \$899,753; that of the grammar school lands, \$173,557, and that of the lands devoted to the university, \$233,620; making the total valuation nearly \$1,500,000. It is probable that the present valuation would not be far from the same figures.

§ 10. *School Taxes.* Until 1892 the school district was the unit in school matters in Vermont, and the money derived from town taxes, the school lands and the United States deposit and Huntington funds¹ was distributed to the districts, by a system of increasing complexity. Only the more significant changes in practice since schools began to be established soon after the Revolution will be indicated here. Whatever schools existed before the war were of an exceedingly simple character and were based wholly on local initiative. The first act of the Vermont General Assembly for the encouragement of schools was passed in October, 1781, and allowed the towns to levy a land tax, not exceeding two pence per acre, for building houses for public worship, school-houses and bridges.² The next act was more comprehensive.³ It permitted each town to divide itself into districts, and the selectmen, with "one or more meet person" in each district, were appointed trustees of the schools,

¹ The fund received by Vermont on deposit as its share of the surplus revenue distributed in 1837 amounts to \$669,086.79. It is distributed among the cities and towns in proportion to the population, and the share of each town and city is placed in the hands of trustees for investment. The income is devoted wholly to public schools.

The Huntington fund, of about \$211,000, is also devoted to the support of schools, the income being distributed annually to the cities and towns.

² *Laws*, 1781, p. 440 of Slade's *State Papers*.

³ *Ibid.*, 1787, p. 136.

and were to pay to a district prudential committee annually the income arising from the lease of the school lands, in proportion to the number of scholars in each school. The districts were compelled to raise one-half of the additional amount needed by a tax on the grand list, and the other half could be raised either by another tax on the list, or by subscriptions, proportionable to the number of children. The collectors' warrants were issued by the justice of the peace. An act of 1797, elaborated their system.¹ No tax could be raised unless two-thirds of the inhabitants of a district voted for it. The towns themselves could now levy a tax on the list, and the proceeds were distributed to the districts on the basis of children between the ages of four and eighteen years. The property in a district or a town owned by a non-resident of that district or town could not be taxed for schools.

Such was the law on which legislation was based for nearly one hundred years. No modification seems to have been made in it until 1810, when a tax of one cent on the dollar of the grand list was imposed on each town, to be divided among the districts as the income from the school lands and the voluntary town tax had been.² The towns could make the tax payable in any kind of produce. No district could receive any part of this tax unless it had kept a school of at least two months in the same year, with its own money. In 1818 the property of non-residents, as well as residents, was made taxable for schools.³ From the fact that in 1821 it was made the duty of grand jurors each year to inquire whether the towns in the county had collected the tax of one cent on the dollar, and to indict negligent towns,⁴ it may be inferred that compliance with the school laws was not the in-

¹ *Laws*, compilation of 1797, p. 493.

² *Ibid.*, 1810, chap. cvii, p. 153.

³ *Ibid.*, 1818, chap. xv, p. 84.

⁴ *Ibid.*, 1821, chap. xx, p. 90.

variable practice at this time. In 1824 the town tax was made two cents, instead of one cent, and it was again enacted that towns could vote to have the tax paid in produce.¹ Another increase in the rate was effected in 1826, when three cents were substituted for two.² This is to be explained by the decrease in the amount of the grand list. In 1827 a general law was adopted, containing the principle of the law of 1797 and embracing the amendments subsequently adopted, with minor changes.³ One of the provisions of this act was that when the amount of funds for the support of schools in any town should yield an income as great as that derived from the three-cent tax, the tax, or as much of it as would not be needed to make up that amount, could be omitted. The change in the amount of the grand list made by the revision of the list in 1841 caused, also, a change in the rate of the school tax, which now became nine cents on the dollar.⁴ Section 2 of the act making this change contained this provision respecting the town tax, made necessary by the addition of the United States surplus fund to the other school funds of the towns:

If in any town the income appropriated in such town for the use of schools, after deducting one-half of the income arising from the United States deposit money, shall amount to as large a sum as would be raised by such tax, the selectmen shall not be required to assess the same; or if such income shall be less, the selectmen shall assess a tax only sufficient, with such income, to amount to the sum which would be raised by a tax of nine cents on the dollar.

The custom of assessing a part of the expense of supporting schools on the scholars continued until 1864,⁵ when the stat-

¹ *Laws*, 1824, chap. vii. p. 10.

² *Ibid.*, 1826, chap. xliii, p. 22.

³ *Ibid.*, 1827, chap. xxiii, p. 19. Under this law only the children attending school could be assessed for an additional tax. *Brown vs. Hoadley*, 12 Vt., 472.

⁴ *Ibid.*, 1842, chap. xx, p. 23.

⁵ *Ibid.*, 1864, chap. lxi, p. 69.

ute was amended so as to provide that all expenses be met by taxes on the grand list.

The division of the money derived from school funds and the town tax has been on different bases at different times. At first, as has been indicated, it was on the number of school children in a district. Later, one-fourth of the total was divided equally among the districts, and the remainder was divided in proportion to the number of children. Still later, the portion divided equally became one-third, and for a number of years before the district system was abolished in 1892, it was one-half, unless the amount to be divided was over \$1200. In later years it became the practice to make the estimate on attendance instead of the number of scholars. In 1870 the towns were permitted to adopt the town system,¹ and those voting to adopt it were relieved from the complications connected with the division of school money. A few years before the change to the town system the town tax was fixed at twelve cents on the dollar. In 1888 a new school law was adopted, which contained minute directions as to the division of the money.² A commonwealth tax of five cents on the dollar was imposed in 1890 for the benefit of the schools.³ It amounted to \$89,029.77, and was distributed among the towns, cities, unorganized towns and gores in proportion to the number of legal schools kept in the preceding school year. Places not having the town system nor graded school districts divided the money equally among the districts which had kept legal schools, and those having the town system or graded school districts divided it as the other school money was divided. The tax was sporadic, however; it was not continued in 1892.

The division of so large a portion of the town and commonwealth taxes and the income from the school funds

¹ *Laws*, 1870, chap. x, p. 38.

² *Ibid.*, 1888, chap. ix, p. 38.

³ *Ibid.*, 1890, chap. vi, p. 23.

among the districts without regard to the number of scholars resulted in great inequalities of taxation between the districts. The rates range from 5 cents to \$2.50 on the dollar of the grand list.¹ But in 1892 the town system was adopted. The towns and cities now devote the money coming from the school funds and taxes to the schools in what seems to each the most beneficial manner. The selectmen of each town must appropriate for schools each year a sum not more than one-half and not less than one-fifth of the grand list of the town, and must assess a tax sufficient to meet the appropriation. The towns may, by special vote, devote a still larger sum to the support of schools. The new system has its fiscal as well as educational advantages, and it is undoubtedly the most important legislative action taken by Vermont in recent years.

§ 11. *Miscellaneous Local Revenue.* Since 1876 the fees for dog licenses have gone to the town and city treasuries. These fees are \$2 for males and \$4 for females. In Burlington the receipts from this source are devoted to the public library. All the towns and cities also receive a greater or less income from the sale of liquor by the public agents, these being the only authorized vendors of liquor.

¹ *Laws*, 1892, chap. xx, p. 24.

CHAPTER VIII. STATISTICS.

§ 1. *Of the Grand List.* Statistics of the grand list before 1842 are of little value, as property before that year was listed at fixed valuations, very largely. In 1781 the list was £149,541; in 1791 it was £324,796; in 1796 it had increased to £477,651; in 1806 it was \$2,738,531; in 1818, \$2,995,658; in 1830, \$1,834,980;¹ in 1836, \$2,057,257; in 1840, \$2,199,762. Since 1841, however, property has been listed nominally at its true value, and the following table gives the grand lists that have been made upon that basis, for a number of years sufficient to show the tendency of valuations:

¹ The decrease was due to the changes in the valuation of personalty made by the act of 1825.

TABLE NO. I.—THE GRAND LIST.

Year	Real estate.	Personal estate.	One per cent.	Attorneys, etc.	Polls.	Completed grand list.	Rate ¹
1842	\$56,623,752	\$12,900,399	\$695,241.53	.....	\$47,785	\$743,026.49	.10
1845	56,585,773	10,926,998	675,127.72	.....	100,490	742,682.21	.10
1847	56,608,921	10,695,698	673,046.20	\$3,555	97,672	766,011.98	.12
1850	57,013,390	13,097,731	701,111.22	2,867	103,026	806,164.22	.15
1853	61,720,414	15,281,283	770,016.97	.....	106,468	875,442.97	.16
1856	69,284,400	16,902,561	861,869.61	.....	106,630	966,759.61	.14
1860	70,341,721	16,530,130	981,764.72	.....	113,006	979,604.72	.20
1862	69,951,685	15,773,204	857,248.89	Dogs.	109,440	964,210.89	.80
1864	69,929,215	18,045,973	879,751.80	11,764	124,484	1,014,818.33	\$1.25
1866	71,638,678	21,435,281	930,739.59	10,129	134,208	1,074,780.59	.55
1868	71,172,113	21,846,691	930,188.04	12,166	133,920	1,075,814.04	.40
1870	80,993,100	21,555,428	1,025,485.28	15,878	137,362	1,177,583.28	.50
1872	82,381,647	19,623,584	1,020,052.31	17,745	138,414	1,173,058.31	.40
1874	79,724,217	19,330,432	990,546.49	18,939	139,142	1,145,115.49	.30
1876	81,198,291	18,519,312	997,176.03	18,862	142,458	1,154,902.03	.25
1878	70,919,120	16,845,123	877,642.43	.....	144,784	1,019,290.43	.30
1879	71,017,981	15,375,533	863,935.14	.....	146,590	1,007,407.14	.40
1880	71,114,747	15,037,262	861,520.09	.....	144,912	1,003,500.09	.20
1881	102,437,102	46,896,967	1,493,340.69	.....	147,296	1,637,620.69	.17
1882	106,372,797	46,218,508	1,525,913.05	.....	147,514	1,670,607.05	.10
1883	104,549,674	49,586,310	1,541,359.84	.....	151,310	1,690,227.84	.....
1887	104,534,036	50,060,171	1,545,942.07	.....	158,314	1,704,256.07	.12
1888	110,676,818	49,911,339	1,605,881.57	.....	158,314	1,762,418.57	.....
1889	111,683,680	49,163,677	1,608,473.57	.....	160,384	1,767,059.57	.20
1890	112,895,125	49,203,388	1,620,985.13	.....	161,818	1,780,525.15	.....
1891	108,379,751	48,937,118	1,573,168.69	.....	161,946	1,733,638.69	.18
1892	109,947,551	48,878,272	1,588,258.23	.....	165,278	1,751,745.23	.....

§ 2. *Of the Finances in 1890.* The following table, kindly furnished me by the census office, is a comparative statement of the finances of the commonwealth in 1890 and 1880, and needs little explanation. It will be observed that, while the debt of all the taxing units has decreased since 1880, taxes have increased in the total and per capita, except in the commonwealth and county divisions. There has been, however, an increase in commonwealth taxes, also, since 1880, if the corporation taxes, which are not mentioned in this table, are included.

¹ The rate is usually expressed as a certain number of cents on the dollar of the list. It has also been referred to as the "rate per cent." No confusion need result from the use of the two expressions.

TABLE NO. II.—FINANCES IN 1890 AND 1880.

	1890.	1880.	Increase or decrease.	Percentage of increase or decrease.	Per capita. 1890. 1880.
Population—Total.....	332422	332286	d 136	d 0.04	
Places having 4000 or more.....	74635	62217	12418	19.96	
Places having less than 4000	257787	270069	d 12282	d 4.55	
Valuation—Total	\$162098513	\$86806775	\$75291738	86.73	\$487.63 \$261.24
Real estate.....	\$112805125	\$71436623	\$41458502	58.04	\$339.61 \$214.98
Personal property	49203388	15370152	33833236	220.12	148.02 46.26
Total of places having 4000 or more population	42462495	17609376	24853119	141.14	\$568.94 \$283.03
Total of places having less than 4000 population.....	119636018	69197399	50438619	72.89	464.09 256.22
Debt less sinking fund (net debt)	\$3785373	\$4499188	d \$713815	d 15.87	\$11.39 \$13.54
Total valuation less net debt.....	158313140	82307587	76005553	92.34	476.24 247.70
Taxation—Total	\$22105395	\$17451111	\$360284	20.65	\$6.33 \$5.25
Commonwealth	\$176651	\$403286	d \$226635	d 56.20	\$0.53 \$1.21
County	11302	15344	d 4042	d 26.34	0.03 0.05
Minor divisions except for schools	1206625	896775	399850	44.59	3.90 2.70
Minor divisions for schools	620817	429706	191111	44.47	1.87 1.29
Total of places having 4000 or more population.....	651787	480899	170888	35.54	\$8.73 \$7.73
Total of places having less than 4000 population.....	1453608	1264212	189396	14.98	5.64 4.68
Indebtedness—Total, Net, Commonwealth and Local.....	\$3785373	\$4499188	d \$713815	d 15.87	\$11.39 \$13.54
Bonded	2902207	3218863	d 316566	d 9.83	8.73 9.69
Floating	1071286	1336798	d 265518	d 19.86	3.23 4.02
Sinking fund	188204	56473	131731	233.26	0.57 0.17
Commonwealth debt, net.....	\$148416	\$151020	d \$2604	d 1.72	\$0.45 \$0.45
County debt, net.....	5108	23421	d 18313	d 78.19	0.01 0.08
Minor divisions except school districts, net.....	3529014	4167469	d 1532455	d 15.32	10.62 12.54
School district debt, net.....	102835	157278	d 54443	d 34.62	0.31 0.47
Net debt per \$1000 of total valuation	\$23.35	\$51.83	d \$28.48	d 54.96	

d. Decrease.

CHAPTER IX. CONCLUSION.

The history of taxation in Vermont, although crowded into but about one hundred and twenty-five years, is a history of development from the most primitive methods to a system characteristic of the industrial activity of to-day—that on corporations, based mainly on gross receipts. Under New York, highway taxes paid in labor, on a basis of equality of faculty, were firmly established. That system came down to 1892, although the basis of the tax had been transferred from polls to the grand list. The influence of New York is hardly observable elsewhere in taxation. Taxes for general purposes were levied for the most part, both under New York and during the early years of the Vermont government, on land; they were in the form of taxes on proprietors' rights for many local purposes, of land taxes in the towns for maintaining roads and bridges, and of commonwealth taxes for purposes in which it was deemed the land-owners had a peculiar interest. The local land taxes for roads and bridges continued through the first half of this century.

These two forms of taxes bore the brunt of the first demands for the support of government. Next, with the new state, came the grand list. This at first contained three distinct elements—polls, income and general property. It still contains the first and the third, the income element having disappeared in 1850. General property was at first estimated in accordance with schedules of fixed valuations for all the various kinds of property ordinarily possessed, and this method of assessment continued until 1841, except in re-

spect to real estate, which was appraised after 1819. Deductions from personal property for debts have always been permitted. The fate of the general property tax in Vermont has been quite similar to that observed in other commonwealths. It has been found impossible to obtain true valuations for realty and to bring to light the full volume of personalty. Yet since the revision of the law in 1880 it must be said a degree of success has attended the listers' task.

For a portion of this success, however, the corporation tax law of 1882 ought to receive credit. It may be asserted with confidence that the decrease in commonwealth taxes on the grand list, made possible by the corporation tax law, has removed to a very great degree the animus of low valuations. The towns see that if the taxes to be paid are principally for local purposes, it makes little difference whether realty is set in the list at its full value or at a valuation nearer one-half the true value; for in the former case the rate will probably be about one-half what it will be in the latter. Still, the law in its present form does not give complete satisfaction. Taxes on personalty are still dodged, as they will be so long as intangible personalty is included in the grand list. Deductions for debts are so large that it is frequently suggested that no deductions whatever be allowed. The fact that in the past ten years no material changes in the composition of the grand list have been made, is sufficient proof that these abuses are not at present flagrant enough to constitute an indictment of the system.

The changes in the present law most frequently suggested in recent years have been the exemption of mortgages from taxation and the deduction of debts on real estate from the valuation of the real estate. The plan tried by Massachusetts and California of taxing both mortgagor and mortgagee at the situs of the real estate, each in proportion to his interest in the property, also was discussed at the last session

of the legislature. But a more successful claimant to the consideration of the legislature was the proposition to tax collateral inheritances. It passed the lower house, and had it been better understood it is believed it would have received favorable treatment at the hands of the senate. As it was, it was defeated at the instance of the finance committee of that body. If prophecy is permissible, it may be said that it seems likely that the next important step in taxation in Vermont will be along the line of inheritance taxes. Such taxes, with the corporation taxes, would probably make it possible to forego to a large extent grand list taxes for commonwealth purposes, and grand list taxes would thus become practically a local institution. But it is to be remembered that Vermont is neither a large nor, comparatively, a rich commonwealth, and that inheritance taxes would not yield such regular returns as they have yielded in New York and Pennsylvania. It is therefore likely that grand list taxes for commonwealth revenue would remain as the elastic means by which the amount needed in excess of corporation and inheritance taxes could be readily raised.

APPENDIX I.

THE VERMONT STATE BANK.

Vermont made no experiment in paper money after the issue of bills of credit of 1781 until 1806, when a bank was established. The bills of credit were issued for a period of about fourteen months, and after the expiration of that time they were redeemed as presented. It is remarkable that the success of this issue did not prompt the people to try the plan a second time; but the revenue from land sales doubtless had its influence in promoting a conservative policy. The subject of more paper money was agitated in 1786, when discontent and financial distress were rife in Vermont, as in Massachusetts, and the General Assembly submitted it to a popular vote, with the result that the proposal was defeated by 2197 votes to 456. The light vote is evidence of a lack of confidence in the scheme. The bank of 1806 had at first two branches—one at Woodstock and the other at Middlebury¹—and in 1807 branches at Burlington and Westminster were added. The directors were elected by the legislature, and one of the sections of the act of 1806 was to the effect that bills should not be issued to an amount greater than the deposit of silver, gold and copper coin, until the deposit amounted to \$25,000, after which bills to the extent of three times the deposit could be issued; but at no time could the latter exceed \$300,000. In 1807 the revenue of the commonwealth was deposited in the bank. An

¹ *Laws*, 1806, chap. cx, p. 164.

act of 1810 restricted the amount of bills that could be issued to twice the deposit of coin, and other measures were adopted with the object of sustaining the credit of the bank; but already suspicion of its ability to cash its bills was abroad. In 1812 the Westminster branch was closed, and the probable failure of the Middlebury branch to redeem announced. After an investigation by a committee, the legislature, in the same year, ordered the directors to issue no more bills. The Middlebury and Burlington branches were removed to Woodstock, and a beginning was made of the process of closing up the affairs of the bank. The failure was largely the result of circumstances for which the directors were not responsible. The embargo and the non-intercourse act had paralyzed general business, and the bank suffered from the failure of banks in other commonwealths. Governor Galusha in his message of 1809¹ briefly refers to "the difficulties of the bank: "The failure of private banks in the vicinity of this state; the rejecting our bills by the law of one state; and the policy or caprice of others, has embarrassed our mercantile intercourse with the adjoining states." The loss to the commonwealth through the failure has never been stated. Thompson² speaks of it as "very considerable," but the editor of the *Governor and Council* gives it as his opinion that, whatever it was, it was compensated for by the advantage coming to the people through a comparatively sound currency.³ The individual loss was slight, for the commonwealth was back of the bills, and the latter were redeemed or exchanged for interest-bearing notes. The bills of the bank were made receivable for many taxes voted after 1807.

¹ *Governor and Council*, vol. v. p. 401.

² Z. Thompson's *Civil History of Vermont*, part ii, p. 137.

³ *Governor and Council*, vol. v, p. 451.

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